PREDESIGNATION OF PERSONAL PHYSICIAN REGULATIONS	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION DATE COMMENT SENT MODE OF TRANSMISSION (E-MAIL, LETTER, FAX)	RESPONSE	ACTION
§9780.1(d)	SB 899 narrowed the scope of who can be predesignated by an employee as a "personal physician" under workers' compensation. It limited predesignation to only primary care physicians. In doing so, the new law acknowledged the important and valuable relationship between the primary care physician and the employee/patient, and it extended that relationship into treatment of on-the-job injuries. In addition, SB 899 established MPN that allow employers to create networks of occupational and specialist physicians and other treatment providers. These networks are critical to an employer's ability to provide appropriate and cost-effective medical care to its employees. The proposed DWC regulations expressly provide that employees who predesignate are essentially allowed to "opt out" of the MPN altogether. DWC states that <u>any referrals by the</u>	Jill Buchholz Risk Manager City of Redondo Beach October 24, 2005 Email Geneva Krag, LEUSD Safety Coordinator October 24, 2005 Fax Paul C. Wilhelmsen Executive Director VCSSFA/CSEBO October 24, 2005 Email DeHaas, Diane [Diane.DeHaas@ocgov.com] October 28, 2005 Email Gloria E. Shaw Director, Risk Management	We disagree. Requiring a predesignated physician to make referrals within the employer's MPN goes beyond the authority granted by the Labor Code section 4600. This section does not distinguish between employees of employers that offer MPNs and employers that do not offer MPNs. Additionally, it does not authorize the DWC to implement regulations that would distinguish between the two classes of employees. Although the Labor Code is silent regarding restrictions on referrals by the primary care physician, Labor Code section 4061.5 states in relevant part: "The treating physician [is] primarily responsible for managing the care of the injured worker…." This section supports an interpretation that the treating physician who has	None.

	predesignated physician may be made to physicians and providers outside of the MPN. Referrals could be made to any physician, including those who have no prior relationship with the employee. The proposed regulations are contrary to the Legislative intent of SB 899, to narrow the scope of predesignation and create exclusive MPNs for all treatment. It also undermines the overall purpose of SB 899 - **to reduce costs and provide for better treatment of on-the-job injuries by physicians who are experienced in occupational medicine and have a relationship with the employee**. Predesignation is a significant issue in public agencies. If the proposed regulations are adopted, we fully expect an even stronger push by these unions toward predesignation, rendering MPN reforms virtually useless. There is no reason in law or policy why any injured worker, public or private, who has predesignated a personal primary care physician cannot be referred to physicians and providers within the MPN when such referral is	Rialto Unified School District November 2, 2005 Email Janet Selby, ARM Workers' Compensation Manager Municipal Pooling Authority November 3, 2005 Letter (Routed by the Governor's Office) Paul C. Wilhelmsen, Executive Director Ventura County Schools Self Funding Authority November 1, 2005 Letter (Routed by the Governor's Office) Bill Lopez, Risk Mgmt Director The City of San Diego December 14, 2005 Fax	been predesignated is responsible for managing the employee's care and this management includes referrals to other physicians. Administrative regulations many not alter or amend a statute or enlarge its scope. California Government Code section 11342.2 provides that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute…" Because the Labor Code does not distinguish between the designated personal physician of employees of employers that offer MPNs and employers that do not offer MPNs, we do not believe that the DWC has authority to make such a distinction. Based on these Labor Code sections, Title 8, California Code of Regulations, section 9767.1 of the final MPN regulations was drafted to define a covered employee as follows: (2) "Covered employee" means	

	deemed necessary by the predesignated physician. SB 899 recognized the unique and valuable relationship between primary care physicians and their patients. In fact, SB 899 authorized predesignation to continue solely in this limited circumstance. **The proposed regulations significantly undermine the cost savings and improved medical treatment delivery intended by the narrowed predesignation rules and creation of MPNs under SB 899.** The recommendation is to change the proposed regulations such that referrals by primary care physicians must be made within an employer's Medical Provider Network.		an employee or former employee whose employer has ongoing workers' compensation obligations and whose employer or employer's insurer has established a Medical Provider Network for the provision of medical treatment to injured employees *unless:* (A) the injured employee has properly designated a personal physician pursuant to Labor Code section 4600(d) by notice to the employer prior to the date of injury, or; (B) the injured employee's employment with the employer is covered by an agreement providing medical treatment for the injured employee and the agreement is validly established under Labor Code section 3201.5, 3201.7 and/or 3201.81." (Emphasis added.) Pursuant to the MPN regulations, an employee who has predesignated a personal physician is not a covered employee in a MPN and is not required to treat with MPN	

			physicians. The predesignation regulations' reference to referrals by the personal physician is consistent with this definition. As to the comment that the predesignation regulations threaten to undermine the cost-containment purposes underlying MPNs and authorized by SB 899, treatment by the predesignated physician and associated referrals will still be subject to utilization review, limits on chiropractic and physician therapy services limits, ACOEM treatment guidelines and the Official Medical Fee Schedule.	
§9780.1(d)	The commenter focuses on the interaction between predesignation and MPN. The commenter states that it jeopardizes the cost control that was expected under and a major driving force behind the passage of SB 899. MPNs were created specifically to assist employers in controlling medical treatment. If a physician of the proper specialty or other ancillary provider is available in the MPN, The commenter does not see why the predesignated physician should not be required to	Janet Selby Workers' Compensation Manager Municipal Pooling Authority October 24, 2005 Email	We disagree. See above.	None.

	make referral within the MPN. The recommendation is to modify the language to: 9780.1(d) The predesignated physician shall make all referrals within the MPN, as long as there is a physician of the proper specialty or an appropriate ancillary provider in the MPN. The second choice would be to have subd (d) stricken, although this may increase the likelihood of litigation over referrals.			
§9780.1 (a)(3)	The commenter states that if the predesignated physician does not sign the predesignation form in advance, the regulations should be clear about what "other documentation" is acceptable. The recommendation is to specify what documentation will be acceptable under ADR 9780.1(a)(3) and also see suggestion below for 9780.1(f).		We disagree. Trying to list all types of documentation that may show that the physician agreed to be predestinated is more likely to cause disputes, as many examples may be factually specific.	None.
§9780.1(f)	The commenter disagrees with the prohibition from contacting the predesignated physician prior to initiation of treatment to confirm agreement to be predesignated. The commenter employers want to make this contact in advance of an injury, to		We disagree. Contacting the physician before there is a work related injury is an invasion of the employee's privacy, the patient physician confidentiality, and could easily be abused by inquiring about a potential	None.

	make things easier after an injury. The commenter does not understand why this contact is prohibited. The recommendation is to strike the language in 9780.1(f) that prohibits contact by the employer or claims administrator to confirm predesignated status. The commenter has no objection to the prohibition on contact regarding medical info or history prior to an injury.		employee's health status prior to hire.	
§9780(g)	The commenter states that the proposed regulations are inconsistent with LC § 4600 (d) and LC § 5304 and as such are invalid as a matter of law. (1) Labor Code § 4600 (d)(2)(A) and (B) specifically define, "personal physician" for purposes of predesignation under the statute. The statutory definition is in no fashion limited to the practice areas set forth in the proposed regulation. The Legislature did not limit the definition of a primary care physician to that contained the second sentence of proposed Section 9780(g). A predesignation of a physician who is	Angie Wei Legislative Director California Labor Federation October 24, 2005 Via Fax And Public Hearing December 15, 2005 Oral Comments	We disagree. Labor Code section 4600 requires that, in order to be predesignated, the "personal physician" must be a "primary care physician." The "primary care physician" definition is based on the definition of primary care physician found in Health and Safety Code § 1367.69 and Welfare and Institutions Code § 14254.	None.

	not the primary care physician of the employee is clearly invalid given the provisions of LC § 4600 (d)(2)(B). Whether the predesignated physician is or is not the primary care physician of an injured employee is a question of fact. It is not an issue that the Administrative Director is somehow empowered to resolve by regulation. It is instead an issue of fact to be resolved by the WCAB pursuant to LC §5304 and that finding of fact by the WCAB is not subject to judicial review pursuant to the provisions of LC § 5953. Nothing in LC § 4600 diverts the WCAB of its authority under LC § 5304 to resolve all factual disputes arising under LC § 4600. The recommendation in order for the proposed regulation to be consistent with the statute the second sentence of proposed section 9780 (g) must be stricken.			
§9780.1 (a)(3)	(2) The statutory provision, LC § 4600 (d)(2)(c) states, "The physician agrees to be predesignated" The Legislature did not see fit to create any requirement that the physician's agreement be in any fashion in writing or documented. The Legislature is clearly aware of the		We disagree. Section 9780.1(a)(3) does not require the physician to sign the form or agree in writing. Labor Code section 4600 does require the employee to notify the employer of the predesignation in writing.	None.

	fact that agreements may be oral or written. Noticeably the Legislature saw fit to require the employee's predesignation to be in writing but in no fashion required the evidence of the physician's agreement to be in writing or to be supported by any written documentation. Any dispute as to whether or not an appropriate physician has in fact "agreed" to be predesignated is of course an issue of fact. That issue of fact in turn is within the jurisdiction of the WCAB pursuant to LC § 5304 and the WCAB's determination of fact is not subject to judicial review pursuant to LC § 5953. Under the provisions of Section 9780.1 (a)(3) as presented a personal primary care physician who has orally agreed to treat the injured worker and who meets the requirements of LC§ 4600 (d)(2)(A) and (B) will not be eligible to treat the injured worker. The employees should not have to re-predesignate their physicians.		Use of the form is optional. However, Labor Code section 4600(d)(2)(C) does require that: "The physician agrees to be predesignated." Also, section 9708.1(b) provides that if the employee has previously predesignated a personal physician it will be considered valid as long as the conditions of (a) have been met.	
§9783	The second, "bullet" of the form which reads, "the doctor is your regular physician, has previously director your		We agree and will add the definition of "primary care physician" to the form so that the	We will amend the form to

	medical treatment, and retains your medical records," The foregoing language fails to take into account the proposed invalid limitations of proposed Section 9780(g) discussed in part (1) above. The form is in not consistent with Section 9780 (g). There simply is no provision to be found within the form which alerts workers and physicians to the invalid restrictions of Section 9780 (g) discussed in part (1) above.		injured worker is aware of the restrictions.	conform with the definition in the regulations as a non substan-tive change.
§9780	The commenter is pleased that DWC continues to include doctors of osteopathic medicine. The recommendation is to modify the first sentence on the personal physician predesignation form, changing "doctor of osteopathy" to "doctor of osteopathic medicine	Kathleen S. Creason, MBA Executive Director Osteopathic Physicians & Surgeons of California November 3, 2005 Letter	We agree.	We will make this non-substantiv e change.
§9780	The commenter objects to the definition of primary care physician. Commenter states that Orthopaedic surgeons can and meet the criteria based on LC §4600(d)(1) and (d)(2) particularly for individuals who have had previous injuries or musculoskeletal problems. Other specialties such as osteopaths, neurologists, psychiatrists, allergists, and dermatologist could also be serving	Diane Przepiorski Executive Director November 4, 2005 Letter	We disagree. The definition is based on the definition of primary care physician found in Health and Safety Code § 1367.69 and Welfare and Institutions Code § 14254.	None.

	as the primary care physician for a patient depending on their medical condition. The proposed regulations inappropriately limit an injured worker's ability to predesignate a physician and surgeon most appropriate by limiting a primary care physician to only the following physician specialties: general practice, internist, pediatrician, obstetrician-gynecologist, or family practitioner. This definition does not take into account that other physician specialties, such as orthopaedic surgeons, osteopaths, neurologists, psychiatrists, etc. could be serving as the primary care physician of a patient. The commenter added that the regulation requires primary care physicians to be board certified or board eligible. Nothing in the statue requires board certification or board eligibility of the personal physician. LC §4600 does not limit the specialty of the personal physician or require board certification or board eligibility and thus believe that the proposed regulations go beyond the statute.			
§9780.1©	The commenter states that rather than	(Form Letter)	We disagree. Requiring a	None.

and (d)	simply providing clarity within the regulation that a predesignated physician need not be a member of the employer's MPN, the proposed regulation takes the extraordinary step of declaring that the limited statutory right to designate a "personal physician" is in fact a right to opt out of the MPN altogether. There is no statutory basis for this broad expansion of the effect of predesignation. In addition, it is contrary to the policy underlying both the new predesignation state as well as the new MPN system. SB899 expressly narrowed the scope of which physicians can qualify as a "personal physician". Previously, any physician who had treated the employee for any condition could predesignated. This change evidences a new policy in the predesignation law- a policy that stresses the value of an ongoing doctor/patient relationship.	Brian Loventhal, JD BCJPIA, City Manager City of Monte Sereno November 1, 2005 Letter Craig Helmstedter, Ed.D. Associate Superintendent November 7, 2005 Letter Stephen Rosenthal, President Marin School Insurance Authority November 8, 2005 Letter Michael McGuire Schools Insurance for Employees November 9, 2005 Letter Wes Combes, President North Valley Schools Insurance November 10, 2005 Letter Chuck Graham, Risk Manager	predesignated physician to make referrals within the employer's MPN goes beyond the authority granted by the Labor Code section 4600. This section does not distinguish between employees of employers that offer MPNs and employers that do not offer MPNs. Additionally, it does not authorize the DWC to implement regulations that would distinguish between the two classes of employees. Although the Labor Code is silent regarding restrictions on referrals by the primary care physician, Labor Code section 4061.5 states in relevant part: "The treating physician [is] primarily responsible for managing the care of the injured worker…." This section supports an interpretation that the treating physician who has been predesignated is responsible for managing the employee's care and this management includes referrals to other physicians.	

		Sutter County Henry Garcia, City Administrator City of Rialto Sam Penrod, HR Manager City of San Clemente November 14, 2005 Letter Dan Edds, Secretary Association of Bay Area Govt. Larry Johnson, VIP President November 16, 2005 Letter Robert Pearson, CHWCA President Kelly McDowell, ICRMA President Jerald O'Banion, Chairperson Merced County November 17, 2005	Administrative regulations many not alter or amend a statute or enlarge its scope. California Government Code section 11342.2 provides that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute…" Because the Labor Code does not distinguish between the designated personal physician of employees of employers that offer MPNs and employers that do not offer MPNs, we do not believe that the DWC has authority to make such a distinction. Based on these Labor Code sections, Title 8, California Code of Regulations, section 9767.1 of the final MPN regulations was drafted to define a covered employee as follows: (2) "Covered employee" means an employee or former employee whose employer has ongoing workers' compensation obligations and whose employer or employer's insurer has established a Medical Provider	

		Letter Ron Salzberg, Exec. Director Saddleback Memorial Medical Center November 21, 2005 Letter Bridget F. Moore Interim Exec. Director Contra Costa County Schools Insurance Group Jonathan R. Shull President, CAJPA November 22, 2005 Letter Betty Sumwalt, BSN, COHN-S Manager Employee Health Services November 23, 2005 Email Richard W. Robinson Chief Executive Officer Stanislaus County	Network for the provision of medical treatment to injured employees *unless:* (A) the injured employee has properly designated a personal physician pursuant to Labor Code section 4600(d) by notice to the employer prior to the date of injury, or; (B) the injured employee's employment with the employer is covered by an agreement providing medical treatment for the injured employee and the agreement is validly established under Labor Code section 3201.5, 3201.7 and/or 3201.81." (Emphasis added.) Pursuant to the MPN regulations, an employee who has predesignated a personal physician is not a covered employee in a MPN and is not required to treat with MPN physicians. The predesignation regulations' reference to referrals by the personal physician is consistent with this definition. As to the comment that the	

		Jeff Grover, Chairman Stanislaus County November 29, 2005 Letter Cindy Martin Workers Comp Division County of Placer Dr. Christine Wallace, Interim Assistant Superintendent Beuamont Unified School District November 30, 2005 Letter Gary Poertner, Dep. Chancellor South Orange County Community College District December 1, 2005 Letter Linda Dobie, R.N., J.D. Administrator, Risk Management Torrance Memorial Medical Ctr December 5, 2005 Letter	predesignation regulations threaten to undermine the cost-containment purposes underlying MPNs and authorized by SB 899, treatment by the predesignated physician and associated referrals will still be subject to utilization review, limits on chiropractic and physician therapy services limits, ACOEM treatment guidelines and the Official Medical Fee Schedule.	
§9780.1(f)	This provision prohibits the employer from contacting a "predesignated physician" to determine predesignated status. We have no objection to a prohibition on contact for purposes of obtaining medical information or medical history. However, we do object to the prohibition on clarifying the potentially uncertain status of the physician.		We disagree. Contacting the physician before there is a work related injury is an invasion of the employee's privacy, the patient physician confidentiality, and could easily be abused by inquiring about a potential employee's health status prior to hire.	None
§9780.1(a)	The language of the proposed regulation is illogical. The physician is not lawfully a predesignated "personal physician" (who cannot be contacted) unless that physician is 1) a primary		We disagree. No statutory authority exists requiring the predesignated physician to sign a form as evidence of an agreement to be predesignated.	None.

	care physician, 2) the employees "regular" physician, and 3) has "agreed" adequately documented, the physician is not yet a predesignated personal physician. It seems only logical that this uncertainty be resolved prior to injury, rather than only after an injury occurs. This problem is exacerbated by the failure of the proposed regulation to adequately specify what "other documentation" of physician agreement will be acceptable. (See discussion of subdivision (a), below.) If an employer could resolve this issue up front, disputes and complications such as the proposed regulation addresses in subd (i), discussed below could be avoided.	John B. Bahorski, City Manager City of Seal Beach David L. Dolenar, Deputy Officer Stanislaus County Gene Albaugh, City Administrator City of Plymouth The Hon. Ron Lander, Mayor City of Coalinga December 7, 2005 Letter Tony Lashbrook, Town Manager Town of Truckee December 8, 2005 Letter	Requiring such a signature is beyond the Administrative Director's authority. Thus, the predesignation regulations provide an optional form which clearly states that the physician is not required to sign the form, but that other documentation of the physician's agreement to be predesignated will be required pursuant to section 9780.1(a)(3) of the regulations.	
§9780(a)(3)	Commenter believes that the phrase "other documentation" requires further clarification. There can be significant consequences and confusion if an employee's attempt to predesignate a physician fails for lack of one of the three mandatory preconditions. Rather than generate future disputes after an injury occurs concerning whether a valid agreement had been documented at the	Joanne Rennie, General Manager of Parsac December 9, 2005 Letter Carol Perry Interim Superintendent Mendocino Unified School December 15, 2005 Email	We disagree. Although examples of other documentation such as a letter, telephone, e-mail or fax notice, could be listed, it is impossible to set forth an all-inclusive list.	None.

§9780.1(i)	time the employee notified the employer that he or she has a personal physician, the regulation ought to encourage certainty from the outset. It is much preferable that all parties have a clear understanding of what is, and what is not, adequate evidence of physician agreement. The existence of this subdivision evidences the need to clarify several of the issues raised above. A personal physician has to be predesignated - that is, the employee must notify the employer prior to injury. Since the physician cannot be a "personal physician" absent meeting the 3 preconditions, and since the physician can only serve in that capacity if the notice is provided prior to injury, it follows that the 3 preconditions must also be established prior to injury. Yet the purpose of subdivision (i) is to allow an employee to establish *after an injury* that he or she has a valid personal physician. The fact that the subdivision contemplates valid notice after injury conflicts with the statute. The language also sets the employer up for an impossible choice. On the one		We disagree. The doctor's agreement to treat may have been made prior to the injury, but the documentation was not provided prior to the injury. This subdivision addressed that situation.	We will make a nonsub-stantive change to clarify the syntax: "Upon provision of the document-ed agreement <u>that was</u> made prior to injury that meets the condition"

	hand, if there is a predesignated personal physician, all treatment, including initial treatment, must be provided through that physician. On the other hand, if the predesignation is not valid, then treatment may, per this subdivision, be provided pursuant to Section 4600 or Section 4616. But how is the employer to know if the physician in the notice is a valid personal physician or not? The precise proof necessary is not specified in the proposed regulation. The employer is barred by the proposed regulation from clarifying the status until after treatment has commenced. (See proposed subdivision (f).) Yet this subdivision (i) contemplates allowing the employer to commence treatment for the employee with a physician other than the physician who may (but may not) be a personal physician. When there is a potentially defective notice, what is the employer to do immediately after receiving notice of an injury? Is treatment commenced by the physician named in the notice, as required by subdivision (f), or by a physician provided by the employer, as allowed by subdivision(i)?			

	The recommendation is to provide in the regulation that a valid notice must be completed prior to injury, or the physician named in the notice is not a valid personal physician for that injury. The regulation should also provide a pre-injury mechanism to resolve any defects or ambiguities.			
§9780(g)	The commenter express opposition to the proposed regulations defining predesignation of physicians unless amended. Commenter and injured worker patients have already experienced the misinterpretation of the law governing primary treating physicians by the SCIF until DWC intervened. Commenter is concerned that the same misinterpretation of primary care physician will be made, causing unneeded pain for the injured employee and unneeded added expense to the premium-paying employer in curing or relieving the workplace injury. The recommendation is to amend the definition of personal care physician so that it is clear to all workers' compensation stakeholders that doctors	Dr. Jonathan Slater, DC, QME November 09, 2005 Email Public Hearing December 15, 2005 Kristine Shultz California Chiropractic Association Oral Comments	We disagree. Labor Code section 4600 (d)(2)(a) requires the predesignated physician to be a physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code[5]. Although only an M.D. or D.O. may be predesignated by the employee, chiropractors may still participate in an injured worker's care because the employee may change his or her treating physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601) Pursuant to section 9783.1 of the	None.

	of chiropractic can serve in the capacity of a primary care physician.		regulations, in order to be eligible to make this change, the employee must give the employer the name and business address of the personal chiropractor in writing prior to the injury or illness.	
§9780(g)	The commenters express their opposition to the proposed regulations defining predesignation of physicians unless amended. Commenters are asking that the regulations remove the exclusive reference to medical doctors. Commenters and injured worker patients are concerned that taken out of context, insurance claims examiners will read the primary care physician definition and prevent their treatment or coordination of treatment, thus causing expensive delays to the treatment to which the injured worker is entitled. Commenters and Injured worker patients have already experienced the misinterpretation of the law governing primary treating physicians by the SCIF until DWC intervened. Commenters are concerned that the same misinterpretation of primary care physician will be made causing unneeded pain for the injured employee and unneeded added expense to the	(Form letter) William Griffin Jr. D.C. Alex Baek, D.C. Roland Brim D.C. John Hunt D.C. John Larson, D.C. Michael A. Wooten, D.C. G. Keith Jackson, D.C. David E. Cox, D.C. November 9, 2005 Email Dana Goodrich, D.C. Laura Sheehan, D.C., R.N. Nicole Olsen, D.C. Jonathan D. Lemler, D.C. Jeff Coyle, D.C. Charles A. Musich, D.C. Marc F. Wilkerson, D.C. Massoud Nassiri, D.C. Kebby Margaretich, D.C. Tony K. Kim, D.C.	We disagree. Labor Code section 4600 (d)(2)(a) requires the predesignated physician to be a physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code[5]. Although only an M.D. or D.O. may be predesignated by the employee, chiropractors may still participate in an injured worker's care because the employee may change his or her treating physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601) Pursuant to section 9783.1 of the regulations, in order to be eligible to make this change, the employee must give the	None.

	premium-paying employer in curing or relieving the workplace injury. Commenters states that by making reference to only one type of licensed health care professional, the proposed definition of primary care physician will be anything but clear to the detriment of injured worker patients and premium-paying employers. Although commenters believes that the draft regulation is not intended to prevent doctors of chiropractic from being primary care physicians, commenters believe that it will create unnecessary confusion and expensive, patient-damaging care delays. The recommendation is to amend the regulation to remove all reference to any specific type of health care provider and to be clear to all in the workers' compensation community that doctors of chiropractic can serve in the capacity of primary care physician.	James L. Stirton D.C., QME Gary W. Baker, D.C., QME G. Keith Jackson, D.C. November 9, 2005 Letter Ya-Wen Cheng, D.C., LAC November 9, 2005 Fax Rick Joy, D.C.,QME Donal A. Harless, D.C. November 10, 2005 Email Karen Kartch, D.C., QME Kenneth A. Thomas, D.C. Leonard C. Loo, D.C. Dennis J. Barker, D.C. H. Lee Laue, D.C. Vu Huy Phan, D.C., QME Scott Swanson, D.C. Eric A. Galla, D.C. Terry R. Quibell, D.C. Benjamin D. Johnson, D.C. Steven B. Hansen, D.C.	employer the name and business address of the personal chiropractor in writing prior to the injury or illness.	

		Larry J. Kleefeld, D.C. James R. Neary, D.C., QME Christian Bartels, D.C. Dominique Manasson, D.C. Gina Bianchi, D.C. November 10, 2005 Letter Kiyen Tay, D.C. Joseph Maniscalco, D.C November 10, 2005 Via Fax and Letter Dan K. Fox, D.C. Dr. Kathleen Tulloss, D.C. Binh Do, D.C. Frank Panoussi, D.C. Thomas Austin, D.C. Scott M. Sawyer, D.C. November 11, 2005 Email Lance L. Miller, D.C. Carolyn L. Mein, D.C. Ted Rosen, D.C. November 11, 2005 Letter		

		Ricardo F. Castro, D.C.,QME November 11, 2005 Via Fax Michael Brunner, D.C. Floyd Minana, D.C. Eileen A. Driscoll, D.C. Ernest S. Brigham. D.C. Matthew R. Egbert, D.C. Jason A. Edwards, D.C. Gary N. Lewkovich, D.C. Joseph A, Giacalone, D.C. November 11, 2005 Letter Mark E. Whitemyer, D.C. November 12, 2005 Letter George Kirk, D.C. Lisa Kirk, D.C. November 13, 2005 Letter Jerry Ralston, D.C. Timothy E. Kopper, D.C. Ruby K. Kevala, D.C. Pamela Dunn, DC, QME Kendra Cohn, Palmer		

		College of Chiropractic West November 14, 2005 Email Rhonda T. Lilien, D.C. Mary Jo Giagiari, D.C. Glenn S. Cloud, D.C. James G. Pfann, D.C. William K. Scruggs Jr., D.C. William K. Scruggs, D.C. Christopher K. Scruggs, D.C. James B. Saul, D.C. Daniel J. Murphy, D.C. November 14, 2005 Letter Mitchell Swanson, D.C. November 15, 2005 Email Catherine Kleiber, D.C. James Davis, D.C. Elizabeth Fathipour, Office Manager, Atlas HealthCare Kris Kennedy, D.C. Alan Ivar, D.C. David Borges, D.C.		

		Steven D. Jensen, D.C. Thomas Pesko, D.C., CCSP Greg S. Olsen, D.C. November 15, 2005 Letter Karen Borges, D.C. November 15, 2005 Email Michael Perry Joseph, D.C. Bonnie Wolf Helen Schneitzer David W. Downey Algis Leveckis Jeannine Ekedahl Peck Drennan Jennifer Blum Gordon Cox William Tevolen Carrie A. Ford November 15, 2005 Via Fax Richard Gerardo, D.C. Michael Onkels, D.C. Adam Del Torto, Jr., D.C.		

		Darwin S. Leek, D.C. Howard Freidman, D.C. Gary C. Kelley, D.C. Douglas F. Davis, D.C. Nicole Cherok, D.C. Jennifer Cravens Keith A. Hardoin, D.C. Victoria Duong, D.C. November 16, 2005 Letter Anthony Rayman, D.C. Jeff Haynes D.C. November 16, 2005 Email Kathy Portal, D.C. Kelly Austin, D.C. November 16, 2005 Letter Jeffrey Hiner, D.C. Sandra Karlic, D.C. Audrey Gandy Quinn Crosby Sandra Hiner November 16, 2005 Via Fax Michael Billauer, D.C. Christopher Carr, D.C. Robin Roloff, D.C.		

		November 17, 2005 Email Ashley Herfindahl, D.C. Jay Bunker, D.C. November 18, 2005 Email Gregory E. Call, D.C. November 18, 2005 Letter Roy Damser, D.C. November 19, 2005 Email/Fax Chad R. Nelson, D.C. Daniel J. Williams, D.C. Julie Hollinger, D.C. November 19, 2005 Letter Steven Blaut, D.C. Vicken Bedikian, D.C. Charles G. Davis, D.C. November 21, 2005 Letter Denise Barredo, D.C. November 21, 2005 Email		

		Michael H. Street Meadow Holmes Rose G. Kuntz Catherine Lagarde Sandra J. Gordon Donald Dehare Henry Sherman Starlene Caldwell November 22, 2005 Via Fax Tracy D. Cole, D.C. November 22, 2005 Letter (Form letter) Hortado(unrecognizable name) Noel Hanson Erica Ramos Gic Cortes (unrecognizable name) Lorenzo Salindo (unrecognizable signature) Ivan Melean. D.C. November 23, 2005 Email		

		Gregory S. Siegel, D.C. November 23, 2005 Letter Lynn P. McNeal, D.C., DABCO Joseph P. Houseman, D.C. November 28, 2005 Via Fax Michael W. Williams, D.C., QME George Chernich, D.C. November 28, 2005 Letter Jignesh Bhakta, D.C. Gregory Clark, D.C. Richard Brophy, D.C. Lonnie R. Powell, D.C. November 29, 2005 Letter Audrey Egan, D.C. November 30, 2005 Email Steven C. Larson, D.C. Howard Fromstein, D.C. November 30, 2005		

		Letter Ted H. Omura, D.C. Brad Schmidt, D.C. Leslie Hewitt, D.C., BS, QME December 1, 2005 Letter Aaron B. Hinde, D.C. December 3, 2005 Letter & Email Nancy Hollis, D.C. Luis Aguilar, D.C. John E. Thomas, D.C. December 5, 2005 Letter Keneth Garvey, D.C. December 5, 2005 Fax Suzanne Fratto Hopstock, DC December 6, 2005 Email Joseph L. Keller, D.C. December 7, 2005 Fax Joel Mendoza, D.C. Bradley H. Pike, D.C., QME Casey Chan, D.C. December 7, 2005 Letter		

		Hamid Pejman, D.C. December 8, 2005 Letter Ramona Jacobson, D.C. December 8, 2005 Email Thomas E. Resendez, D.C. Richard P. Musillo, D.C. Marie Mccreary, D.C. Robert Walker Angela Ornelas, D.C. December 9, 2005 Letter Jo English, D.C. December 10, 2005 Email Troy R. Brunke, D.C., QM December 10, 2005 Letter Ronald Cappi, D.C. December 11, 2005 Email Clark J. Barton D.C. Scott P. Gillespie, D.C. Randall C Gall D.C. Russell Bloxton, D.C., QME Randal G. Jones, D.C.		

		December 12, 2005 Letter Adam J. Orszag, D.C. Lloyd Friesen, D.C. John Quinn, D.C. Kevin Clerico, D.C., QME December 12, 2005 Fax Tami S. Auerbach, D.C. December 13, 2005 Email Claudette Nassoor-Satnick, D.C. William Satnick, D.C. Rick Joy, D.C. John Bueler, Jr., D.C. December 13, 2005 Fax Eric G. Mortensen, D.C. Karl R. Harer, D.C. Charles J. Martin, D.C. Raymond W. Knapp, D.C. John M. Koopmans, D.C. John M. Watson D.C., QME Darryl Klawitter, D.C., QME		

		December 14, 2005 Email & Fax David Pakard, D.C. Daniel Latch, D.C. Kenneth C. So, D.C. Kevin Hwang, D.C. Delia M. Gorey, D.C. Teresa Whittenburg, D.C. Michael A. Mendoza, D.C. Michael Solis, D.C. Adam Cantor, D.C. David M. Latch, D.C. December 14, 2005 Fax Kassie Donoghue, D.C. Deborah Murphy-Brooks, D.C. December 15, 2005 Letter Mark Elliott, D.C. Richard Kantor, D.C. December 15, 2005 Email David J. Lamb, D.C. December 15, 2005 Fax		

§9780(g)	The commenter express opposition to the proposed regulation that will define only medical doctors as being eligible for predesignation, (i.e., 9780(g)). Commenter states that if the proposal is adopted, commenter assures that insurance carriers will widely and incorrectly interpret this as meaning that doctors of chiropractic cannot be primary treators. Some carriers, (such as SCIF), have already attempted to do this, actually sending out letters stating that DCs could not serve as PTPs. After a great deal of effort and pressure, SCIF finally relented and retracted this illegal policy. Eliminating all primary care doctors except medical doctors form predesignation eligibility will only add more confusion and will give carriers impetus to further eliminate doctors of chiropractic and other non-MDs from providing care to injured workers. Doctors of chiropractic have always been and remain primary portals of entry into the health care system for injured workers and others, helping to both provide direct treatment and to coordinate referrals for specialty care	James T. Platto MPH, D.C., QME November 10, 2005 Email	We disagree. Labor Code section 4600 (d)(2)(a) requires the predesignated physician to be a physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code[5]. Although only an M.D. or D.O. may be predesignated by the employee, chiropractors may still participate in an injured worker's care because the employee may change his or her treating physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601) Pursuant to section 9783.1 of the regulations, in order to be eligible to make this change, the employee must give the employer the name and business address of the personal chiropractor in writing prior to the injury or illness.	None.

	and over all case management. Our treatment, relative to more invasive medical care, is typically more cost effective and our track record with regard to both care and accountability in the workers' compensation system during the past 50 years has been excellent. The recommendation is to amend the definition of personal care physician' to clearly reflect to all participants in the workers' compensation system that doctors of chiropractic can serve in the capacity of a primary treator to eliminate confusion.			
§9780(g)	The commenter states that the proposed language is exclusionary and possibly confusing. The recommendation is to remove all references to specific health care providers.	Patrick D. Fairchild, D.C. Fairchild Chiropractic Clinic November 10, 2005 Letter	We disagree. Labor Code section 4600 (d)(2)(a) requires the physician to be a physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code[5].	None.
§9780(g)	The commenter states that the proposed change threatens to remove doctors of chiropractic from a pre-designable status for injure workers.	Robert Paul Kessler, DC, QME Advanced Chiropractic November 10, 2005	We disagree. Labor Code section 4600 (d)(2)(a) requires the physician to be a physician and surgeon, licensed pursuant to Chapter 5 (commencing with	None.

	The recommendation is to make the appropriate amendments as to specifically indicate that chiropractors remain an option as a pre-designable primary treater.	Via Fax and Letter	Section 2000) of Division 2 of the Business and Professions Code[5].	
§9780(g)	The commenter as a state appointed QME, already saw first hand the confusion recent legislative changes have created for carriers not allowing injured workers timely and proper care. Commenter believes that this legislation will only muddy the waters even more. Commenter understand that the intent is not to eliminate chiropractors from treating injured workers but this confusion can be expensive and can create damaging delays in care. The recommendation is to amend or remove the regulation disallowing injured workers from predesignating their personal chiropractors from becoming primary treating physicians during initial phases of care and to amend the definition of physician so that it is clear to all workers' compensation carriers that doctors of chiropractic can serve in the capacity of primary care physician.	Eric R. Belusa, D.C., CCSP, QME November 14, 2005 Via Fax & Email	We disagree. Labor Code section 4600 (d)(2)(a) requires the predesignated physician to be a physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code[5]. Although only an M.D. or D.O. may be predesignated by the employee, chiropractors may still participate in an injured worker's care because the employee may change his or her treating physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601) Pursuant to section 9783.1 of the regulations, in order to be eligible to make this change, the employee must give the employer the name and business address of the personal	None.

			chiropractor in writing prior to the injury or illness.	
§9780.1 © and (d)	The commenter states that the proposed regulations go beyond the statutes where it declares that the right to designate a personal physician means the employee has the right to opt out of the MPN altogether. There is no statutory basis for such a broad interpretation of predesignation. The regulation should more appropriately provide that a predesignated physician need not be a member of the employer's MPN. Furthermore, under the proposal, any physician to whom the predesignated physician refers the employee is afforded the same status as "personal physician" and may be outside of an otherwise valid MPN, regardless of the fact that the physician is not a primary care physician and regardless of the fact that there is no prior doctor/patient relationship of any sort. MPNs were authorized by the statute to help control costs and to better ensure quality care by occupational medicine specialists. Allowing a complete withdrawal from the MPN undermines this and is unnecessary to assuring the employee's right to predesignate a physician with	Sandra Silberstein Director of Governmental Relations California Association of School Business Officials November 14, 2005 Letter	We disagree. Requiring a predesignated physician to make referrals within the employer's MPN goes beyond the authority granted by the Labor Code section 4600. This section does not distinguish between employees of employers that offer MPNs and employers that do not offer MPNs. Additionally, it does not authorize the DWC to implement regulations that would distinguish between the two classes of employees. Although the Labor Code is silent regarding restrictions on referrals by the primary care physician, Labor Code section 4061.5 states in relevant part: "The treating physician [is] primarily responsible for managing the care of the injured worker…." This section supports an interpretation that the treating physician who has been predesignated is responsible for managing the employee's care and this	None.

	whom he or she has an established primary care relationship.		management includes referrals to other physicians. Administrative regulations many not alter or amend a statute or enlarge its scope. California Government Code section 11342.2 provides that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute…" Because the Labor Code does not distinguish between the designated personal physician of employees of employers that offer MPNs and employers that do not offer MPNs, we do not believe that the DWC has authority to make such a distinction. Based on these Labor Code sections, Title 8, California Code of Regulations, section 9767.1 of the final MPN regulations was drafted to define a covered employee as follows: (2) "Covered employee" means an employee or former employee whose employer has ongoing workers' compensation	

			obligations and whose employer or employer's insurer has established a Medical Provider Network for the provision of medical treatment to injured employees *unless:* (A) the injured employee has properly designated a personal physician pursuant to Labor Code section 4600(d) by notice to the employer prior to the date of injury, or; (B) the injured employee's employment with the employer is covered by an agreement providing medical treatment for the injured employee and the agreement is validly established under Labor Code section 3201.5, 3201.7 and/or 3201.81." (Emphasis added.) Pursuant to the MPN regulations, an employee who has predesignated a personal physician is not a covered employee in a MPN and is not required to treat with MPN physicians. The predesignation regulations' reference to referrals by the personal physician is	

			consistent with this definition. As to the comment that the predesignation regulations threaten to undermine the cost-containment purposes underlying MPNs and authorized by SB 899, treatment by the predesignated physician and associated referrals will still be subject to utilization review, limits on chiropractic and physician therapy services limits, ACOEM treatment guidelines and the Official Medical Fee Schedule.	
§9780.1 (f)	Commenter has no objection to a prohibition on contact for purposes of obtaining medical information or medical history. However, it makes no sense to broaden this prohibition beyond the intent of the statute to prohibit contact that ultimately provides more clarity to both employee and employer as to the status of a physician.		We disagree. Contacting the physician before there is a work related injury is an invasion of the employee's privacy, the patient physician confidentiality, and could easily be abused by inquiring about a potential employee's health status prior to hire.	None.
§9780.1 (a)	This subdivision addresses the statutory requirement that an otherwise qualified		We disagree. Although examples of other documentation	None

	personal physician agree to be predesignated. The commenter states that "other documentation" needs further clarification because it fails to specify what sort of "other documentation" is acceptable.		such as a letter, telephone, e-mail or fax notice, could be listed, it is impossible to set forth an all-inclusive list.	
§9780.1 (i)	The purpose of subdivision (i) appears to be to allow an employee to establish *after an injury* that he or she has a valid personal physician. But the statute does not allow for valid notice after injury. The proposed language sets up a no-win for employers. The precise proof necessary is not specified in the proposed regulation and the employer is barred by the proposed regulation from clarifying the status until after treatment has commenced. The recommendation is to provide in the regulation that a valid notice must be completed prior to injury, or the physician named in the notice is not a valid personal physician for that injury.		We disagree. The doctor's agreement to treat may have been made prior to the injury, but the documentation was not provided prior to the injury. This subdivision addressed that situation.	We will make a nonsub-stantive change to clarify the syntax: "Upon provision of the documented agreement <u>that was</u> made prior to injury that meets the condition…".
§9780(g)	The commenter is opposed to the draft regulation. The new laws and SB899 reform had taken rights away from the	David A. Gonzales, D.C. Apple Chiropractic November 14, 2005	We disagree. Labor Code section 4600 (d)(2)(a) requires the predesignated physician to	None.

	patients, as well as allowed the work comp carriers to misconstrue the new rules to obstruct benefits that the injured worker is entitled to. One of these obstructed rights has been the availability of chiropractic conservative care. Should the decision on who will be entitled to chiropractic care be left to parties other that the patient, it is evident that the insurance companies and the medical community will obstruct chiropractic care. This obstruction is evident with the affects of SB899 reform and how the insurance companies and the medical community has misrepresented the reform rules and laws in order to errantly limit an injured worker's benefits. Commenter believes that limiting the notice to the Workers' Community by referencing only Medical Doctors as licensed health care professionals excludes the chiropractor and dismissed the contribution that conservative doctors have played in providing relief and cure to the injured worker. Insurance company will be confused by the definition change and they will obstruct benefits to the injured worker. SCIF and other insurance carriers have blatantly misrepresented the changes made in compensation	Letter	be a physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code[5]. Although only an M.D. or D.O. may be predesignated by the employee, chiropractors may still participate in an injured worker's care because the employee may change his or her treating physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601) Pursuant to section 9783.1 of the regulations, in order to be eligible to make this change, the employee must give the employer the name and business address of the personal chiropractor in writing prior to the injury or illness.	

	reform of SB899 and through conspiracy or incompetence to understand the workers compensation code, will have a strong proclivity to misrepresent the changes proposed in LC §9780(g) to exclude benefits to the injured worker. The recommendation is to avoid probable injustice to the injured worker.			
§9780(g)	The commenter states that the regulation is not even in effect yet and commenter have been denied care for patients. Passing the new regulation would further hinder care to patients. The intent may not be to exclude doctors of chiropractic from providing primary care, the statute has the potential to be thusly abused.	Karl A. Giljum, D.C. November 15, 2005 Letter	We disagree. Although only an M.D. or D.O. may be predesignated by the employee, chiropractors may still participate in an injured worker's care because the employee may change his or her treating physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601) Pursuant to section 9783.1 of the regulations, in order to be eligible to make this change, the employee must give the employer the name and business address of the personal chiropractor in writing prior to the injury or illness.	None.

§9780.1 (g)	The commenter states that it would limit the ability for workers to receive conservative chiropractic care by redefining the primary care physician designation, in essence eliminating duly licensed doctors of chiropractic as PCP's under the workers compensation system. Commenter and injured worker patients are concerned that their care will be interrupted or eliminated and they will be forced to go to a medical physician when they choose not to. Insurance claims examiner have already given the chiropractic profession difficulties be defining care as they see it and this new regulation may be seen as way for them to eliminate chiropractic care altogether. Patients have already experienced the misinterpretation and the abuse of the implementation. Although commenters believes that the draft regulation is not intended to prevent doctors of chiropractic from being primary care physicians, the lack of inclusion is enough to cause misinterpretation among insurance adjustors. The recommendation is to amend the regulation to remove all reference to any specific type of health care	Kenneth E. Martin, D.C. November 18, 2005 Letter	We disagree. Although only an M.D. or D.O. may be predesignated by the employee (Labor Code section 4600), chiropractors may still participate in an injured worker's care because the employee may change his or her treating physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601) Pursuant to section 9783.1 of the regulations, in order to be eligible to make this change, the employee must give the employer the name and business address of the personal chiropractor in writing prior to the injury or illness.	None.

	provider.			
§9780.1	The commenter states that Chiropractors should be allowed to be predesignated. Commenter is upset that the revised form specifically states "medical doctors". Commenter attempted to research the answer by searching for the California Code. Commenter found that it DID include chiropractors but did not get any supporting information. Commenter does not understand why some think that "chiropractic care" is "not as good". The recommendation is to make sure that any future paperwork is clear to all and include chiropractors.	Becky Timmerman November 18, 2005 Email	We disagree. Although only an M.D. or D.O. may be predesignated by the employee (Labor Code section 4600), chiropractors may still participate in an injured worker's care because the employee may change his or her treating physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601) Pursuant to section 9783.1 of the regulations, in order to be eligible to make this change, the employee must give the employer the name and business address of the personal chiropractor in writing prior to the injury or illness.	None.
§9780.(g)	The commenter states that the new restriction seems to be in favor of the employer and insurance company, but not the injured worker. The recommendation is to reconsider the issue because chiropractic is cost effective and works better than	(Form Letter) Susan Brady-Henry November 28, 2005 Fax Mark Suerie Luce Gaunthier November 29, 2005	We disagree. Although only an M.D. or D.O. may be predesignated by the employee (Labor Code section 4600), chiropractors may still participate in an injured worker's care because the employee may change his or her treating	None.

	medicine when it comes to spinal related and strain/sprain type of injuries.	Letter Toni Hill November 29, 2005 Email Elvin Fernandez November 30, 2005 Letter James R. Benz December 1, 2005 Letter Marie Archerd December 2, 2005 Letter Jan Mourie-Mullins December 6, 2005 Letter Ann Millbank Maria Albanez December 15, 2005 Letter	physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601) Pursuant to section 9783.1 of the regulations, in order to be eligible to make this change, the employee must give the employer the name and business address of the personal chiropractor in writing prior to the injury or illness.	
§9780(g)	The commenter states that the proposed rule changes regarding primary care physicians appear to provide more opportunities for confusion and delays that are unnecessary. The recent changes in the labor code are so limiting already and have provided the opportunity to the insurance companies for greater abuses. Injured workers already have so few good options under	Mark A. Lopes, D.C., QME December 8, 2005 Email	We disagree. Labor Code section 4600 (d)(2)(a) requires the predesignated physician to be a physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code[5]. Although only an M.D. or D.O.	None.

	the new rules. Please don't add to this difficulty with the proposed changes.		may be predesignated by the employee, chiropractors may still participate in an injured worker's care because the employee may change his or her treating physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601) Pursuant to section 9783.1 of the regulations, in order to be eligible to make this change, the employee must give the employer the name and business address of the personal chiropractor in writing prior to the injury or illness.	
§9780.1 (3)	The commenter states the proposed rule undermines the basic premise and utility of the MPN. Commenter appreciates the rational health delivery system that was defined in SB899 and other recent reforms, including the MPNs. Unfortunately many public entities in this state are not establishing MPNs simply because the "may establish an MPN" leaves the creation open to negotiations, in which public entities have been reluctant to or have be thwarted in establishing an MPN.	Larry Moss Director and Past-President of PARMA December 7, 2005 And Public Hearing December 15, 2005 Public Comments	We disagree. Requiring a predesignated physician to make referrals within the employer's MPN goes beyond the authority granted by the Labor Code section 4600. This section does not distinguish between employees of employers that offer MPNs and employers that do not offer MPNs. Additionally, it does not authorize the DWC to implement regulations that would distinguish	None.

	Others are in the process, and only a few are operational. So we start with the premise that unlike the Labor Code, the MPN is not universally functional for public entities. The proposed change to 9780.1(3) gives public entities even less reason to use the MPN option. Before SB899 and the other recent legislative changes, many of our worse cases to manage to a rational resolution were cases wherein the injured employee went from doctor to doctor. Public entities had a collective sigh of relief in that the MPN reforms would curtail this type of problem. This proposed change undermines the utility of the reform and it leaves it wide open for a person to be shuttled from doctor to doctor. None of us in this room has a health plan that allows us to go to any doctor we desire. Why should any one of us expect that when it comes to workers' compensation that we should have unlimited access? What rationale is there for this proposed change other than to appease some special group? Collectively the public entities PARMA		between the two classes of employees. Although the Labor Code is silent regarding restrictions on referrals by the primary care physician, Labor Code section 4061.5 states in relevant part: "The treating physician [is] primarily responsible for managing the care of the injured worker…." This section supports an interpretation that the treating physician who has been predesignated is responsible for managing the employee's care and this management includes referrals to other physicians. Administrative regulations many not alter or amend a statute or enlarge its scope. California Government Code section 11342.2 provides that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute…" Because the Labor Code does not distinguish between the designated personal physician of employees of employers that offer MPNs and employers that	

	represent know that good management of medical care does not mean using the force of the Labor Code. We strive to provide the best for our employees so that they return to health faster. But if you go ahead and make this amendment surely there will be a struggle when it comes to doctors outside of the MPN who may not be aware of AMA guidelines or how to report on compensation claims. Part of the rationale for the MPN was to expedite medical treatment. Allowing referrals to doctors they are not familiar with workers' compensation provides no distinct advantage over an MPN doctor other than the perception that the predestinated doctor knows best. The proposal undermines the existence of MPNs. There is no proven advantages in granting this referral benefit and creating a prejudiced system for those who have predestinated. To the contrary this will create more problems with referrals to doctors who are unfamiliar with workers' compensation requirements and AMA guidelines. The recommendation is not to enact on the proposed change.		do not offer MPNs, we do not believe that the DWC has authority to make such a distinction. Based on these Labor Code sections, Title 8, California Code of Regulations, section 9767.1 of the final MPN regulations was drafted to define a covered employee as follows: (2) "Covered employee" means an employee or former employee whose employer has ongoing workers' compensation obligations and whose employer or employer's insurer has established a Medical Provider Network for the provision of medical treatment to injured employees *unless:* (A) the injured employee has properly designated a personal physician pursuant to Labor Code section 4600(d) by notice to the employer prior to the date of injury, or; (B) the injured employee's employment with the employer is covered by an agreement providing medical treatment for	

			the injured employee and the agreement is validly established under Labor Code section 3201.5, 3201.7 and/or 3201.81." (Emphasis added.) Pursuant to the MPN regulations, an employee who has predesignated a personal physician is not a covered employee in a MPN and is not required to treat with MPN physicians. The predesignation regulations' reference to referrals by the personal physician is consistent with this definition. As to the comment that the predesignation regulations threaten to undermine the cost-containment purposes underlying MPNs and authorized by SB 899, treatment by the predesignated physician and associated referrals will still be subject to utilization review, limits on chiropractic and physician therapy services limits, ACOEM treatment guidelines and the Official Medical Fee Schedule.	
§9780(f)	The commenter states that in order for an	Brenda Ramirez	We disagree that adding the	None.

	employee to “have the right to be treated by that physician from the date of injury,” the employee must have “notified his or her employer in writing prior to the date of the injury that he or she has a personal physician” (Labor Code section 4600(d)(1)). According to Labor Code section 4600(d)(2), for the purpose of that section the physician must meet all Labor Code section 4600(d)(2) conditions, including condition (c) “the physician agrees to be predesignated.” If not, the physician does not meet the personal physician test; the employee does not have the right to predesignate or to be treated by that physician from the date of injury. The “personal physician” definition therefore must include the physician’s agreement to treat under Labor Code Section 4600(d)(2)©. The recommendation is to modify the language to: (f) “Personal physician” means (1) the employee’s regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, (2) who has been the employee’s primary care physician, and has previously directed the medical	Medical and Rehabilitation Director Michael McClain, VP, Gen. Counsel December 14, 2005 Email Public Hearing December 15, 2005 Michael McClain, VP, Gen. Counsel. Oral Comments	suggested language to the definition of the “personal physician” is appropriate. Instead, the suggested qualifier has to do with whether or not the predesignation is appropriate.	

§9780.1	treatment of the employee, ~~*and*~~ (3) who retains the employee's medical records, including the employee's medical history, *and (4) who agrees, prior to injury, to treat the employee for work-related injuries or illnesses.* The commenter states that this language, which is to be stricken from the regulation, is necessary and should be retained because on the basis of this provision many employers and claims administrators have developed their own predesignation forms. The new form being proposed by the AD is (and should be) optional, so claims organizations will be able to continue to use and modify the forms they have previously provided to their employees. The recommendation is to modify the language to: *If an employee wishes to be treated by a "personal physician" selected pursuant to Labor Code Section 4600, the employee shall notify his employer in writing. The notice need not be in any particular form, and may be in a form reasonably required by the*		We disagree. The stricken language is replaced with language that complies to the amended statute. Subdivision (b) allows the former predesignations to be considered valid as long as they comply with the subdivision (a).	None.

§9780.1(a)(3)	*employer and shall advise the employer of the name and address of such personal physician. Nothing in this Article shall prohibit an employer from permitting an injured employee to be treated by a physician of the employee's choice.* The commenter states that the claims administrator will have no way of knowing whether a physician has designated an employee to acknowledge the treatment of injured workers, unless the physician provides a signed statement to that effect. Proposed regulation 9780.1(a)(3) requires documentation of the pre-designated treating physician's consent to treat by signing Form 9783 or by providing other documentation. In the Institute's commentary on this issue, we have been attempting to ensure the pre-designation of a physician who is willing to treat and whose pre-designation is valid under section 4600(d)(2). It is essential for the provision of prompt medical care that these issues are resolved before the need for treatment arises.		We disagree. Labor Code section 4600 which sets forth the requirements for predesignation states that the personal physician shall meet all of the following conditions including subsection (c) which states "The physician agrees to be predesignated." Labor Code section 3551 deals with written notice to new employees. Subsection (b)(3) states in pertinent part that the notice required shall include: "A form that the employee *may* use as an optional method for notifying the employer of the name of the employee's "personal physician," as defined by Section 4600 . . . ." No statutory authority exists requiring the predesignated	None.

	While the procedure established in subsection 9780.1(i) will ensure that medical treatment is not delayed, the shifting of providers from the MPN to the pre-designated physician has disadvantages, too. Anything that could disrupt the prompt provision of care by the appropriate physician should be eliminated by the regulation. A signed consent form in advance of the need for treatment of a work-related injury promotes the provision of timely medical care. The recommendation is to modify the language to: (a)(3) The employee's personal physician agrees to be predesignated prior to the injury. The personal physician ~~may~~ *shall* sign the optional predesignation form (DWC Form 9783) in Section 9783 as documentation of such agreement. The physician may authorize a designated employee of the physician to sign the optional predesignation form on his or her behalf. ~~If the personal physician or the designated employee of the physician do not sign a predesignation form, there must be other documentation of~~		physician to sign a form as evidence of an agreement to be predesignated. Requiring such a signature is beyond the Administrative Director's authority. Thus, the predesignation regulations provide an optional form which clearly states that the physician is not required to sign the form, but that other documentation of the physician's agreement to be predesignated will be required pursuant to section 9780.1(a)(3) of the regulations.	

	~~that the physician's agreement agreed to be predesignated prior to the injury in order to satisfy this requirement.~~			
§9780.1(f)	If the pre-designated physician has not acknowledged the designation at the time the employee notifies the employer, then the employer or claims administrator should be allowed to follow up with the physician to resolve the question. The consent to treat must be clarified before the need for treatment and if the physician is unwilling to provide care under the parameters of the workers' compensation system, then the employee, employer, and claims administrator need to know that before the injury occurs. The claims administrator must now provide medical treatment within 24 hours of receiving the claim form, and if the injured worker has pre-designated a treating physician, the claims administrator is expected to authorize medical care with that physician immediately. Subsection (f) precludes any communication prior to the injury that would allow an automatic		We disagree. Contacting the physician before there is a work related injury is an invasion of the employee's privacy, the patient physician confidentiality, and could easily be abused by inquiring about a potential employee's health status prior to hire. As set forth above, we disagree that there is authority to require the physician to sign the predesignation form as evidence that he or she has agreed to be predesignated.	None.

	authorization of care when the injury occurs. Allowing the confirmation of the physician's status before the need for treatment would obviate the need to assign an injured worker to one physician, only to reassign him to the pre-designated physician later. A simple verification form could be devised, based on the requirements of section 4600(d)(2), on which the pre-designated treating physician could affirm that he/she: • Is licensed pursuant to Business and Professions Code Section 2000, and is the employee's regular physician, • Is the employee's primary care physician, • Has previously directed the employee's medical treatment, and retains the employee's medical records, including his or her medical history, and • Agrees to be the pre-designated physician and treat work-related injuries or illnesses. There need be no discussion of confidential medical history or personal health information in the communication. The employer or the			

	claims administrator could send the verification form to the physician or the employee to confirm the physician's status, if the physician fails to sign the pre-designation form. The regulation should make it clear that the employer or the claims administrator is permitted to contact the pre-designated physician to confirm the consent to treat and the other statutory prerequisites, once the employee notifies the employer of his or her selection. If this verification process is adopted, then DWC Form 9783 will have to be revised to reflect this procedure. The regulations should also make it clear that if the employee pre-designates a physician other than a medical doctor (MD) or a doctor of osteopathy (DO), or otherwise does not meet the requirements of section 4600(d), then that pre-designation is invalid. The recommendation is to modify the language to: (f) Unless the employee agrees, neither the employer nor the claims administrator shall contact the predesignated personal physician ~~to~~			

§9781	~~*confirm* predesignation status *or contact the treating physician*~~ regarding the employee's medical information or medical history prior to the personal physician's commencement of treatment pursuant to Section 4600 of the Labor Code, *but may communicate with the pre-designated physician to confirm that the physician is willing to treat work-related injuries or illnesses and meets the statutory requirements for pre-designation.* The Institute recommends clarifying the applicability of Labor Code section 4601 in the context of the MPNs. While this section exempts the employers, who provide medical care through a medical provider network, the revisions leave the application of section 4601 vague. The recommendation is to modify the language to: (a)~~ *This section shall not apply to self-insured and insured employers who offer a Medical Provider Network pursuant to Section 4616 of the Labor Code.*~~ *When medical care is provided through a Medical Provider Network, a request for a change of treating physician shall*		We disagree that the subdivision is unclear as written.	None.

	be determined pursuant to Labor Code Section 4616 and Labor Code section 4601 shall not apply.			
§9781(b)(c)	The recommendation is to replace the term "claims administrator" to "employer" in (b)(3) and (c)(1) since it these matters are the responsibility of the claims administrator.		The regulations does state "claims administrator."	None.
§9781(c)(2)	The commenter states that section (c)(2) requires the employee to sign a release that is unnecessary and misleading. The employee's release is not required in this context and should not be requested. The statutes and regulations permit a free flow of information between the treating physician and the claims administrator. If the employee refuses to sign the release, the physician is still required to communicate with the claims administrator pursuant to section 9785. The recommendation for this section: ~~*©(2)If so requested by the selected physician or facility, the employee shall sign a release permitting the selected physician or facility to report to the*~~		We disagree. Some physicians' offices (whether correct or not) require releases to be signed and this requirement will facilitate the process.	None.

§9783	~~*employer's claims administrator as required by Section 9785.*~~ Requiring the documentation of the physician's agreement to be predesignated prior to an injury will avoid any delays in medical care and unnecessary changes in treating physician that will otherwise occur. If the Administrative Director ultimately requires a physician signature, then the language of this form should reflect that, as well. The recommendation is to modify the language. In the event you sustain an injury or illness related to your employment, you may be treated for such injury or illness by your personal medical doctor (M.D.) or doctor of osteopathy (D.O.) if: • your employer offers group health coverage; • the doctor *is your regular primary care physician, has previously directed medical treatment, and retains your medical records including your medical history;* • prior to the injury your doctor agreed to treat you for work injuries or		We disagree. No statutory authority exists requiring the predesignated physician to sign a form as evidence of an agreement to be predesignated. Requiring such a signature is beyond the Administrative Director's authority. Thus, the predesignation regulations provide an optional form which clearly states that the physician is not required to sign the form, but that other documentation of the physician's agreement to be predesignated will be required pursuant to section 9780.1(a)(3) of the regulations. This suggested language is already on the form.	None.

§9783	illnesses; • prior to the injury you provided your employer the following in writing: (1) notice that you want your personal doctor to treat you for a work-related injury or illness, ~~and~~ (2) your personal doctor's name and business address, *and (3) documentation of your persona doctor's agreement to treat you for work-related injuries or illnesses*. To avoid unnecessary disputes over the predesignation of a personal chiropractor or an acupuncturist prior to the injury, the language on the form must clearly indicate the specifications for personal chiropractor or acupuncturist contained in Labor Code section 4601(b) and (c), and parallel the definition of "personal physician" contained in section 9780 (f)(1), (2) and (3). The recommendation: You may not predesignate a chiropractor or acupuncturist as your initial primary treating physician. However, after the initial treatment by a physician selected by your employer or a predesignated personal physician, ~~I~~f if your employer or your employer's		We agree to include the definition of "primary care physician" on the form so that the employee filling out the form will be aware of this requirement.	We will make this non-substan-tive change to the form: "the doctor is your regular physician, who shall be either a physician who has limited his or her practice of medicine to general

	insurer does not have a Medical Provider Network, you may be able to change your treating physician to your personal chiropractor or acupuncturist following a work-related injury or illness. In order to be eligible to make this change, you must give your employer the name and business address of a personal chiropractor or acupuncturist in writing prior to the injury or illness. Your claims administrator generally has the right to select your treating physician within the first 30 days after your employer knows of your injury or illness. After your claims administrator has initiated your treatment with another doctor during this period, you may then, upon request, have your treatment transferred to your personal chiropractor or acupuncturist.			practice or who is a board-certified or board-eligible internist, pediatri-cian, obstetri-cian-gynecolo-gist, or family practitioner, and has previously directed your medical treatment, and retains your medical records
§9780.1	The commenter urges the Division to clarify that employee predesignation of physicians made prior to the promulgation of this rulemaking will continue to be recognized. We are	Elizabeth McNeil, Director Center for Medical Policy and Regulatory Advocacy	We disagree that the regulations need to be revised. Section 9780.1 states: (b) If an employee has predesignated a personal physician prior to the effective	None.

	concerned that in the absence of a grandfathering provision, there will be an undue disruption of existing physician-patient relationships properly established in accordance with California law. CMA is also concerned that physicians and injured workers will be burdened by delays and denials in authorization or payment for treatment. Employers or carriers may delay making a decision until the employee has responded to a request for documentation. This documentation, however, is not essential as other known factors, such as treatment history, already demonstrate predesignation. In those instances, it would be outrageous for valid treatment requests to be delayed or denied because of a technicality unrelated to medical necessity. In addition, physicians may provide treatment and then learn afterwards that authorization has been denied for lack of documentation. Physicians will then have to bill the patient or pursue grievance proceedings to get paid for their services rendered. In these situations, requiring documentation for employees already predesignated	December 14, 2005 Email	<u>date of these regulations, such predesignation shall be considered valid if the conditions in subdivision (a) have been met.</u> If the predesignation still complies with Labor Code section 4600 as amended, and if the physician signed the predesignation form previously, no additional documentation will be required. If the physician did not previously sign the designation, the regulations provide that some sort of documentation will be to be provided to show that the physician agrees to be predesignated.	

	would prolong the process and add avoidable costs to the system. CMA has reviewed the amendment from the California Labor Federation, AFL-CIO proposing to add language that "treatment of the employee's injury by the personal physician qualifies as documentation of such agreement." CMA would support this, or similar language, as a way to ensure that existing physician-patient relationships are not interfered with and subject to disqualification due to a lack of formality. An alternative would be to delete subsection (a)(3) which requires the physician to sign a predesignation form. Such an amendment would maintain the requirement for the employee to predesignate their personal treating physician yet relieve the physician from cumbersome and unnecessary paperwork that could delay the provision of necessary care.		We disagree. Section 9780.1(a)(3) does not require the physician to sign the form. Labor Code section 4600 does require the employee to notify the employer of the predesignation in writing. Use of the form is optional. However, Labor Code section 4600(d)(2)(C) does require that: "The physician agrees to be predesignated."	None
§9780(g)	Subsection (g) inappropriately limits the specialties of primary care physicians allowed to be predesignated by an employee. Labor Code Section 4600 (d)(2) defines a personal physician.		We disagree. Labor Code section 4600 requires that, in order to be predesignated, the "personal physician" must be a "primary care physician." The	None.

	Other physician specialists, such as orthopaedists, psychiatrists, allergists, and dermatologists meet the criteria in Labor Code Section 4600. These specialists now serve as primary care physicians for injured workers depending on the patient's medical condition. The proposed regulation inappropriately limits an injured workers' ability to predesignate a physician most appropriate for the injury by limiting a primary care physician to only the following physician specialties: general practice, internist, pediatrician, obstetrician-gynecologist, or family practitioner. This definition does not take into account that other physician specialists could appropriately be serving as the primary care physician of a patient depending on their primary complaints and injuries. In addition, the proposed regulation that requires primary care physicians to be board certified or board eligible is inconsistent with the law. Labor Code Section 4600 does not limit the specialty of the personal physician or require board certification. <u>Therefore, commenter recommends</u>		"primary care physician" definition is based on the definition of primary care physician found in Health and Safety Code § 1367.69 and Welfare and Institutions Code § 14254.	

	that proposed subsection (g) which includes the definition of a primary care physician be deleted. Proposed Subsection (f) "Definition of Personal Physician" is sufficient and consistent with the law.			
§9780(a)	The commenter opposes any distinction over the handling of emergency health care services. CMA believes that workers' compensation carriers must bear their fair share of the burden to maintain the emergency safety net. It is absolutely unreasonable to have a system where physicians and hospitals are required to provide emergency services pursuant to EMTALA (federal Emergency Medical Treatment and Active Labor Act) standards, while workers' compensation carriers would not necessarily have to pay for those services unless they met some higher standard. Hence, CMA urges the Division to apply the Knox-Keene provisions on emergency services to the Workers' Compensation system. The emergency medical condition and post-stabilization responsibilities for medically necessary health care services after stabilization of an emergency medical condition and the		We disagree. The definition matches the definition used in the Utilization Review Standard regulations (section 9792.6(e).) The UR regulations provide "failure to obtain prior authorization for emergency health care service shall not be an acceptable basis for refusal to cover medical services provided to treat and stabilize an injured worker presenting for emergency health care services." It is necessary that the definition used in the predesignation regulations and UR regulations are the same so that the employee's emergency health care service will not be denied.	None.

	process for handling payment of claims are set forth in Health & Safety Code §1371.4 and 28 C.C.R. §1300.71.4. In addition, CMA remains concerned that the proposed language excludes severe pain in the definition of "Emergency Health Care Services" and recommends that the Knox-Keene Act definition under Health & Safety Code §1371.1(b) be applied. Therefore, CMA recommends the following amendment to be consistent with the Knox Keene Act: "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to ~~place the patient's health in serious jeopardy~~ result in any of the following: (1) Placing the patient's health in serious jeopardy. (2) Serious impairment to bodily functions. (3) Serious dysfunction of any			

§9780.1 (h)	bodily organ or part. Commenter believes that the proposed regulations may deter injured workers from seeking treatment for severe pain even though access to medical screening and stabilizing treatment are mandated under existing laws. Further, the obvious deletion of severe pain from the definition opens the door for claims adjusters to deny payment for services a physician is compelled to provide when severe pain is the only presenting symptom or manifestation. Further, subsection (h) should be amended to conform to this definition as well. (h) Notwithstanding subdivision (f), the employer shall provide first aid and ~~appropriate~~ emergency health care services pursuant to Section 9780 (a) ~~reasonably required by the nature of the illness or injury.~~ Thereafter, if further…."		We disagree for the reasons stated above.	None.
General Comment	The commenter states that Labor Code Section 4600 (d) as amended by SB 899 is so explicit, so clear in its requirements, so unambiguous, that any regulation promulgated to implement its	Ken Gibson, VP, Western Region American Insurance Association	We disagree that the regulations are duplicative of the statute. It is true that the regulations do not address Labor Code section 4600(d)(6) and therefore the	None

	provisions will be duplicative and unnecessary. Only a single subparagraph requires the regulator to act. It reads: (6) The maximum percentage of all employees who are covered under paragraph (I) that may be predesignated at any time in the state is 7 percent. And the only portion of the statute that remains unaddressed in the rule is this paragraph. While the percentage of employees has historically been lower than the statutory cap, the regulated community still needs guidance and needs to know whether or how they will be informed that the cap has been reached.	December 13, 2005 Fax	comment goes beyond the scope of the proposed regulations.	
§9780	You propose striking paragraphs (a) (b) and (c) which had defined "employer," "employee" and adding some new definitions which are directly related to the subject of the rule, such as "personal physician." We have suggested in the past and recommend again that all definitions be combined in a single article under Subchapter 1. This will avoid duplicative definitions,		We disagree. Although we have tried to make the definitions used in the different articles consistent as we have been drafting the reform regulations, there are times when the terms need to be defined differently.	None.

§9780(f)	such as the definition of “claims administrator” and provide the regulated community with a single, consistent dictionary of terms. We have also recommended in the past that the definition of “claims administrator” be amended to eliminate the awkward phrase “self-administered insurer” and to use in its place a reference to Section 3700 of the Labor Code. The definition would then read: (b) “Claim Administrator” means an insurer as defined in Division 4, Part 2, Chapter 2 of the Labor Code; a self-administered self-insured employer, a self administered joint powers authority, a self-administered legally uninsured employer, or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority. Although commenter does not think this regulation is at all necessary, if you adopt a rule, it must consistent with statutory requirements. The definition of a “personal physician” is not. The proposed language drops a critical condition which cannot be ignored. To avoid duplicating statutory language, we		We disagree that adding the suggested language to the definition of the “personal physician” is appropriate. Instead, the “personal physician” must agree to be predesignated.	None.

	recommend that you simply reference Labor Code Section 4600 (d)(2). In the alternative, we recommend that the definition be amended to read: (f) "Personal physician" means (1) the employee's regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with section 2000) of Division 2 of the Business and Professions Code (2) who has been the employee's primary care physician, and has previously directed the medical treatment of the employee, ~~and~~ (3) who retains the employee's medical records, including the employee's medical history, and (4) who agrees to be predesignated.			
§9780.1(a)	This section seeks to implement the requirements of Labor Code Section 4600 (d) which establishes the conditions under which an employee may predesignate a personal physician. You have determined that as long as the employer provides nonoccupational group health coverage, the employee's choice to accept that coverage is irrelevant. Although employees may reject an employer's health plan(s) because the employee is covered under		We disagree. Labor Code section 4600 which sets forth the requirements for predesignation states that the personal physician shall meet all of the following conditions including subsection (C) which states "The physician agrees to be predesignated." Labor Code section 3551 deals with written notice to new employees. Subsection (b)(3)	None.

	a spouse's health plan, other employees choose not to participate because coverage is unaffordable. In those cases, the likelihood that the employee indeed has a personal physician meeting the requirements of Section 4600(d)(2)(B) is probably low. When combined with other provisions of the proposed rule, such as the optional physician signature requirement and the prohibition on contacting the physician in advance to confirm that the statutory conditions have been met, it will be extremely difficult for the employer to determine the validity of any predesignation. Commenter suggest the following change in (a)(1) and (a)(3): (1) Notice of the predesignation of a personal physician is in writing, and is provided to the employer prior to the industrial injury for which treatment by the personal physician is sought. The notice shall include the personal physician's name and business address. The employee *may use a form required by the employer or* the optional predesignation form (DWC Form 9783) in section 9783 for this purpose.		states in pertinent part that the notice required shall include: "A form that the employee *may* use as an optional method for notifying the employer of the name of the employee's "personal physician," as defined by Section 4600 . . . ." No statutory authority exists requiring the predesignated physician to sign a form as evidence of an agreement to be predesignated. Requiring such a signature is beyond the Administrative Director's authority. Thus, the predesignation regulations provide an optional form which clearly states that the physician is not required to sign the form, but that other documentation of the physician's agreement to be predesignated will be required pursuant to section 9780.1(a)(3) of the regulations.	

	(3) The employee's personal physician agrees to be predesignated prior to the injury. The personal physician ~~may~~ shall sign the optional predesignation form (DWC Form 9783) in section 9783 as documentation of such agreement. The physician may authorize a designated employee of the physician to sign the optional predesignation form on his or her behalf. ~~If the personal physician or the designated employee of the physician does not sign a predesignated form, there must be another documentation that the physician agrees to be predesignated prior to the injury in order to satisfy this requirement.~~			
§9780.1 (a) and (f)	Commenter recommends striking the final sentence because it lacks clarity and will create unnecessary confusion about the predesignation agreement which is unambiguous in the statute. Contrary to the DWC's intent expressed in the Initial Statement of Reasons - to avoid disputes - the optional signature requirement, particularly absent an alternative method of documentation equally certain and secure, will create disputes. We disagree with the		We disagree. Contacting the physician before there is a work related injury is an invasion of the employee's privacy, the patient physician confidentiality, and could easily be abused by inquiring about a potential employee's health status prior to hire. As set forth above, we disagree that there is authority to require the physician to sign the	None.

	assertion in the Initial Statement of Reasons that employer use of forms requiring a physicians signature goes beyond the statutory requirements; it is the sole method of assuring the physician's agreement and is entirely consistent with the legislature's intent in expanding upon and adding conditions to the right to predesignation which existed long before enactment of SB 899. Along the same lines, subsection (f), which prohibits pre-injury contact with the predesignated physician for any purpose, is neither necessitated by statute nor by any privacy concerns. Indeed, since the statute requires that the conditions for predesignation be satisfied prior to the date of injury, the employee should reasonably expect that the employer will verify that they in fact have been satisfied. While any other communication would be inappropriate, communication for the purposes of verification must be permitted, particularly since an employer is now liable for the provision of medical care within one day after a claim form is filed. We therefore recommend that the subsection be amended to read:		predesignation form as evidence that he or she has agreed to be predesignated.	

	(f) ~~Unless the employee agrees~~, Neither the employer nor the claims administrator shall contact the predesignated personal physician ~~to confirm predesignation status or contact the personal physician~~ regarding the employee's medical information or medical history prior to the personal physician's commencement of treatment for an industrial injury. *Contact for the sole purpose of verifying that the physician is the employee's primary care physician and has agreed to be predesignated is permissible.*			
§9780.1 (g) and (h)	In the initial statement of reasons, the Division explains that the purpose of subsection (h), which requires the claims administrator to authorize treatment with the predesignated physician is "to clarify that the employer does not have control over the treatment of the employee who has predesignated once the emergency health care of first aid care has been completed." On the contrary, the statute unambiguously gives the employer certain rights, even in the case of predesignation. Labor Code Section 4600 (d) (5) reads:		We disagree that the section is in conflict with Labor Code section 4600. The control refers to which party may choose the physician. It is correct that the employer is entitled to utilization review, however, the regulations do not contradict that right.	None.

	"The insurer may require prior authorization of any nonemergency treatment or diagnostic service and may conduct reasonably necessary utilization review pursuant to Section 4610." The Division is not authorized to curtail rights granted by statute, and the right to prior authorization and the conduct of utilization review is meant to assure that treatment provided, whether by a predesignated physician or a network physician or anyone else is indeed reasonably required to cure or relieve the injured employee from the effects of injury as defined in Labor Code Section 4600 (b). If the wording of subdivisions (g) and (h) are sufficiently ambiguous to give rise to the interpretation you have given them in the Initial Statement of Reasons, then further clarification is needed to bring the those sections into conformity with the clear meaning of the statute. We suggest therefore, that subdivision (g)(1) be amended to read: "authorize the predesignated physician to provide all medical treatment reasonably required to cure or relieve the injured employee from the effects of his or her injury as provided in Labor			

	Code Section 4600 (b). Since subdivision (h) references subdivision (g), no additional amendments are required.			
§9780.1(i)	Subdivision (i) attempts to confer a right on the employee that is not granted by statute and is inconsistent with statutory requirements. If there is no documented physician agreement to be predesignated prior to the date of injury, then the conditions for predesignation do not exist and the failure to provide appropriate notice cannot be corrected after the fact. Aside from the fact that there is no authority for this subdivision, we think it is an open invitation for fraud and for disputes.		We disagree. The doctor's agreement to treat may have been made prior to the injury, but the documentation was not provided prior to the injury. This subdivision addressed that situation.	We will make a nonsub-stantive change to clarify the syntax: "Upon provision of the document-ed agreement <u>that was</u> made prior to injury that meets the condition"
§9783	As stated above, commenter recommends deletion of the final paragraph stating the physician does not need to sign the form. In addition, the fourth bullet in the		We disagree. See response to comment above regarding lack of authority to require the physician to sign the predesignation form.	None.

	opening explanation for employees should read: Prior to the injury you provided your employer the following in writing: (1) notice that you want your personal doctor to treat you for a work-related injury or illness, ~~and~~ (2) your personal doctor's name, ~~and~~ business address <u>and phone number and this form or another form signed by your doctor agreeing to treat you for work-related injuries and illnesses.</u>			
§9780.1(a)(3) **§9780.1(f)**	The proposed language requires that the predesignated physician provide documentation that they have agreed to be predesignated, prior to an injury. The physician has the option of signing DWC Form 9783, or to provide other such documentation to satisfy this requirement. This language prohibits an employer or claims administrator from contacting the predesignated physician prior to an industrial injury to confirm predesignation status, unless there is agreement from the employee to initiate such contact.	Anne Stephenson Senior Vice President Marsh December 15, 2005 Email	We disagree. Labor Code section 4600 which sets forth the requirements for predesignation states that the personal physician shall meet all of the following conditions including subsection (c) which states "The physician agrees to be predesignated." Labor Code section 3551 deals with written notice to new employees. Subsection (b)(3) states in pertinent part that the notice required shall include: "A form that the employee *may* use as an optional method for notifying the employer of the	None.

	It is our opinion that it is the intent of the predesignation status to allow an employee to treat with a physician with whom they have developed a rapport and confidence level, as well as to assure that the treating physician is someone for whom the employee's medical history is known. We believe that although it is likely many predesignated physicians will utilize the DWC 9783, conflicts will be created on claims where no documentation of predesignation status has been provided prior to the injury. In these cases, the employee will be of the belief that they can proceed directly to their predesignated physician, only to be informed at the time of injury that the physician failed to provide the necessary documentation to allow such treatment. This will increase the likelihood of litigation as a potentially adversarial relationship has been established between the injured employee and the employer and claims administrator. The recommendation is to amend the section as follows: Section 9780.1(f): Unless the employee		name of the employee's "personal physician," as defined by Section 4600 . . . ." No statutory authority exists requiring the predesignated physician to sign a form as evidence of an agreement to be predesignated. Requiring such a signature is beyond the Administrative Director's authority. Thus, the predesignation regulations provide an optional form which clearly states that the physician is not required to sign the form, but that other documentation of the physician's agreement to be predesignated will be required pursuant to section 9780.1(a)(3) of the regulations. Contacting the physician before there is a work related injury is an invasion of the employee's privacy, the patient physician confidentiality, and could easily be abused by inquiring about a potential employee's health status prior to hire.	

§9780.1(d)	agrees, neither the employer nor the claims administrator shall contact the predesignated personal physician regarding the employee's medical information or medical history prior to the personal physician's commencement of treatment for an industrial injury. The employer or claims administrator may contact the predesignated personal physician prior to an industrial injury solely for the purpose of confirming predesignation status. This section indicates that in the case of a valid predesignation and a Medical Provider Network is in place, any referral to another physician for treatment need not be within the MPN. It is our opinion that it was the intent of the MPN's to assure quality treatment for injured employees while allowing employers to partner with medical providers who will support efforts to return injured employees to work as soon as possible and reduce treatment costs, ultimately achieving optimal outcomes for employees as well as employers. A study recently published by the Workers Compensation Research Institute and Public Policy		We disagree. Requiring a predesignated physician to make referrals within the employer's MPN goes beyond the authority granted by the Labor Code section 4600. This section does not distinguish between employees of employers that offer MPNs and employers that do not offer MPNs. Additionally, it does not authorize the DWC to implement regulations that would distinguish between the two classes of employees. Although the Labor Code is silent regarding restrictions on referrals by the	None.

	Institute of California entitled "The Impact of Provider Choice on Workers' Compensation Costs and Outcomes" supports this notion, finding that costs were generally higher and return-to-work outcomes poorer in cases where the worker selected the provider. While Marsh fully supports an employee's ability to predesignate a physician, regardless of the physician's status in the MPN, Marsh believes that any additional treatment should be directed through the MPN. The requirements for approval of a Medical Provider Network are such that all reasonably necessary treatment to cure or relieve should be available through the MPN and therefore referrals outside the network should not be necessary. Further, statutes already allow an employee to treat outside of the network if medically appropriate treatment is not available from within the network. The recommendation, section 9780.1(d) should be stricken from the final regulations.		primary care physician, Labor Code section 4061.5 states in relevant part: "The treating physician [is] primarily responsible for managing the care of the injured worker…." This section supports an interpretation that the treating physician who has been predesignated is responsible for managing the employee's care and this management includes referrals to other physicians. Administrative regulations many not alter or amend a statute or enlarge its scope. California Government Code section 11342.2 provides that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute…" Because the Labor Code does not distinguish between the designated personal physician of employees of employers that offer MPNs and employers that do not offer MPNs, we do not believe that the DWC has authority to make such a distinction.	

			Based on these Labor Code sections, Title 8, California Code of Regulations, section 9767.1 of the final MPN regulations was drafted to define a covered employee as follows: (2) "Covered employee" means an employee or former employee whose employer has ongoing workers' compensation obligations and whose employer or employer's insurer has established a Medical Provider Network for the provision of medical treatment to injured employees *unless:* (A) the injured employee has properly designated a personal physician pursuant to Labor Code section 4600(d) by notice to the employer prior to the date of injury, or; (B) the injured employee's employment with the employer is covered by an agreement providing medical treatment for the injured employee and the agreement is validly established under Labor Code section 3201.5, 3201.7 and/or 3201.81."	

			(Emphasis added.) Pursuant to the MPN regulations, an employee who has predesignated a personal physician is not a covered employee in a MPN and is not required to treat with MPN physicians. The predesignation regulations' reference to referrals by the personal physician is consistent with this definition. As to the comment that the predesignation regulations threaten to undermine the cost-containment purposes underlying MPNs and authorized by SB 899, treatment by the predesignated physician and associated referrals will still be subject to utilization review, limits on chiropractic and physician therapy services limits, ACOEM treatment guidelines and the Official Medical Fee Schedule.	
§97680(g)	Commenter states that If the injured employee's employer provides health care in accordance with the Knox-Keene Health Care Service Plan Act of 1975 and the injured employee has	Peggy Hohertz Regulatory Compliance Analyst Case Management and	This comment goes beyond the scope of these regulations.	None.

	appropriately notified them of their pre-designated physician, it appears from Labor Code 4600 (d)(3) that **all** medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by the Knox-Keene Health Care Service Plan Act of 1975. Additionally, disputes regarding the provision of medical treatment are required to be resolved in accordance with the Knox-Keene Health Care Service Plan Act of 1975 which includes independent medical review. Commenter does not believe that the proposed predesignated regulations require that medical care provided by a properly predesignated physician is governed by the Knox-Keene Health Care Service Plan Act of 1975, i.e. Chapter 2.2 of Division 2 of the Health and Safety Code. Will the DWC be submitting separate regulations regarding how the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 of Division 2 of the Health and Safety Code) should be applied to those CA WC cases to which it now applies per Labor Code 4600	Utilization Review Department Fair Isaac Corporation December 15, 2005 Email		

	(d)(3), i.e. cases where the injured employee has predesignated a physician in accordance with Labor Code 4600 (d)(1) or will these predesignation regulations be changed to comply with the actual language of the Labor Code 4600(d)?			
§9780(f) **§9780.1(a)(3)**	Commenter agrees with the comments presented by the Chiropractic Association and the California Applicants' Attorneys association that the definition of "primary care physician" should not be limited to a board-certified or board-eligible internist, pediatrician, obstetrician-gynecologist, of family practitioner". While this makes sense in the Knox-Keene world, it doesn't make any sense whatsoever for injured workers, particularly when you define "personal physician" in subdivision (f) as a "primary care physician". Injured workers should be allowed to designate an orthopedist. Commenter strongly objects to the requirement in Section 9780.1(a)(3) that there must be documentation that the treating physician has agreed to be pre-designated. This is problematic for a number of reasons, not the least of which is that it will automatically	Peggy Sugarman, Executive Director VotersInjuredatWork.org December 15, 2005 Fax Public Hearing December 15, 2005 Mark Gerlach CAAA Oral Comments	We disagree. Labor Code section 4600 requires that, in order to be predesignated, the "personal physician" must be a "primary care physician." The "primary care physician" definition is based on the definition of primary care physician found in Health and Safety Code § 1367.69 and Welfare and Institutions Code § 14254. We disagree. Labor Code section 4600 which sets forth the requirements for predesignation states that the personal physician shall meet all of the following conditions including subsection (c) which states "The physician	None. None.

	invalidate existing pre-designations that do not have any documentation of the physician's agreement but that were made in good faith. The amount of time it would take to get workers and physicians to re-create all of these pre-designations in the event of an injury) is a big waste of time for injured workers and their physicians, as well as for employers who must process all of them. Commenter added that if the physician does not agree to treat his or her patient in the event of a work injury, that worker will then be subject to the same rules as if there was no pre-designated physician, without all of the fuss. Conversely, there is no assurance that a physician who has formally agreed to be pre-designated and followed all of these rules will still be willing to treat the worker in the future. More and more physicians are now refusing to treat work injuries due to problems with payment, delays in authorization, etc. It thus appears that the hoops that would require all parties to gain the physician's signature on this document would add more friction to the system unnecessarily.		agrees to be predesignated." However, section 9780.1(b) provides that if an employee has predesignated a personal physician prior to the effective date of these regulations, such predesignation shall be considered valid if the conditions in subdivision (a) have been met.	

	Commenter concurs with and supports the language that allows workers with valid predesignations to seek all treatment outside the MPN where an employer or insurer has a MPN. There does not appear to be any valid reason to require, as some of the employer and insurer representatives have suggested that workers be shifted to MPN physicians if the pre-designated physician must refer the worker to a specialist. The treating physician is to manage the care for the worker. All physicians are still required to use the same medical treatment guidelines and Section 4600(5) allows the insurer to require prior authorization of any non-emergency treatment or diagnostic service as well as "reasonably necessary utilization review pursuant to Section 4610". So, to introduce a potential dispute to the treatment process at this juncture appears unreasonable and unnecessary.		We agree.	None requested.
General Comment	Commenter believes that the Division has drafted rules that both comply with legislative changes and provide sufficient clarification of the law for claims administrators where needed.	Jose Ruiz, Assistant Claims/Rehabilitation Manager State Compensation Insurance Fund		

§9781©(2)	This section would require an employee – upon a physician's or facility's request—to sign a release permitting the selected physician or facility to report pursuant to CCR §9785. The statement of reasons indicates that this provision is necessary as some physicians or facilities require a release. Reporting medical information to the workers' compensation claims administrator is exempt from HIPAA requirements that are imposed on other health care delivery systems. Specifically, Title 45, Code of Federal Regulations (CFR) 164.512(1) states: "Standard: disclosures for workers' compensation. A covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault." A physician does not need a signed release to provide reports to the workers' compensation claims	December 15, 2005 Email	We disagree. The regulations are not mandating that a release is required. Some physicians' offices (whether correct or not) require releases to be signed and this requirement will facilitate the process.	None.

	administrator as CCR §9785 specifically authorizes -- and in fact requires it. Additionally, the Public Health Service Act, Title 42 of the United States Code, Part C, Section 300gg-91©(1) "Definitions", states that workers' compensation is listed as an exempted benefit and therefore, exempt from HIPAA. The requirements for a medical release are governed by another body of law (CA Civil Code section 56.11). A major goal of the workers' compensation system is the prompt delivery of benefits when due. Mandating that an employee sign a release upon request unnecessarily adds complexity particularly when a signed release is not necessary.			
§9780.1 (a)[3)	The commenters are opposed to the proposed regulations regarding Labor Code Section 4600 (d). Commenters greatest concern is the requirement in the proposed regulation contained in section 9780.1 (a)[3) which seeks to require documentation of the predesignated physician's agreement to be predesignated prior to the date of	Liberty R. Sanchez for Law Offices of Barry Broad and California Teamster Public Affairs Council December 15, 2005 Fax	We disagree. Labor Code section 4600 which sets forth the requirements for predesignation states that the personal physician shall meet all of the following conditions including subsection (c) which states "The physician agrees to be predesignated." The use of the present tense in	None.

	injury. While we acknowledge that the statutory provision, Labor Code Section 4600 (d)(2)(C). Commenter disagrees that the subsection imposes any specified requirement upon the employee and also disagrees that subsection implies any timeframe requirement other than that date of treatment. That is because the Legislature did not specify any requirements regarding the physician's agreement. The Legislature did not specify that the agreement be in writing, nor did the Legislature specify that the agreement take place prior to injury. This point is best illuminated by the fact that the Legislature requires only one thing of the employee under Labor Code Section 4600 (d) if the employee wants to exercise his right to be treated by a personal physician purposes of a workers' compensation injury. One requirement is that the employee notify his employer in writing of the fact that the employee has a personal physician prior to the date of injury. The other requirements enumerated in Labor Code 4600 (d) are not requirement imposed on an employee, nor are they requirements which need to be fulfilled in writing, nor do they need to be		"agrees" supports the interpretation that the physician agrees to the predesignation prior to the injury. Finally, because the agreement to be predesignate is a requirement in order for the predesignation to be valid, the employer has a right to request documentation of the agreement. However, as stated in 9780.1(i), the employee may provide the documentation after the injury.	

	clarified prior to the date of injury. Rather, they are qualifying requirements which enable employees who choose to be predesignated to be treated by their personal physician from the date of injury. In other words, the only thing which has to occur prior to the date of injury is that the employee notify his employer of the fact that he has a personal, physician. This is also the only requirement that needs to be fulfilled in writing. All of the other requirements need to be fulfilled prior to the time the employee exercises the right to be treated by his personal physician, and the Legislature did not specify upon whom those requirements are imposed. Had it been the intention of the Legislature to impose the requirement on the employee that the employee notify the employer of the physician's agreement in writing and prior to the date of injury then the Legislature would have amended the language of 4600 (d) rather than adding the new 4600(d)(2)(C).			
§9780.1(f)	The commenter states that if the pre-designated physician has not provided acknowledgement of predesignation	Tony Cardenas, Legislative Analyst	We disagree. Contacting the physician before there is a work related injury is an invasion of the	None.

	prior to injury, the claims administrator will not be able to determine predesignation status. Claims administrators are expected to immediately authorize medical care with personal physicians; it is imperative that they retain the authority to contact physicians for an employee's medical information or history. The recommendation is to make following amendments: (f) Unless the employee agrees, neither the employer nor the claims administrator shall contact the pre-designated personal physician ~~to confirm predesignation status or contact the treating physician~~ regarding the employee's medical information or medical history prior to the personal physician's commencement of treatment for an industrial injury pursuant to section 4600 of the Labor Code, but may communicate with the predesignated physician to confirm that the physician is wiling to treat work-related injuries or illnesses and meets	League of California Cities December 14, 2005 Fax And Public Hearing December 15, 2005 Oral Comments	employee's privacy, the patient physician confidentiality, and could easily be abused by inquiring about a potential employee's health status prior to hire. As set forth above, we disagree that there is authority to require the physician, prior to the injury, to provide evidence to the employee that he or she has agreed to be predesignated.	

	the statutory requirements for predesignation. For clarification purposes, commenter also recommends the following amendments to proposed regulation 9780(f) Employee's Predesignation of Personal Physician: (f) "Personal physician" means (1) the employee's regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with section 2000) of Division 2 of the Business and Profession Code, (2) who has been the employee's primary care physician, and has previously directed the medical treatment of the employee, ~~and~~ (3) who retains the employee's medical records, including the employee, ~~and~~ (3) who retains the employee's medical records, including the employee's medical history, and (4) who agrees, prior to injury, to treat the employee for work-related injuries or illnesses.		We disagree. We do not agree that the recommended language is clearer.	None.
§9780.1© & (d)	Commenter supports valid predesignated physicians to be outside an MPN, and supports outside referrals if the required medical treatment is not available within an MPN. However, if the required medical treatment is		We disagree. Requiring a predesignated physician to make referrals within the employer's MPN goes beyond the authority granted by the Labor Code section 4600. This section does not distinguish	None.

	available, predesignated referrals should remain within the MPN. The recommendation is to make the following amendments to proposed regulation §9780.1(c) & (d): (c) Where an employer or an employer's insurer has a MPN pursuant to section 4616 of the LC, an employee's predesignation which has been made in accordance with this section shall be valid and ~~the employee~~ shall not be subject to the MPN. (d) Where an employee has made a valid predesignation pursuant to this section, and where the employer or employer's insurer has a MPN, any referral to another physician for other treatment need not shall be within the MPN as long as the MPN includes physicians that provide the treatment for which the employee is being referred.		between employees of employers that offer MPNs and employers that do not offer MPNs. Additionally, it does not authorize the DWC to implement regulations that would distinguish between the two classes of employees. Although the Labor Code is silent regarding restrictions on referrals by the primary care physician, Labor Code section 4061.5 states in relevant part: "The treating physician [is] primarily responsible for managing the care of the injured worker…." This section supports an interpretation that the treating physician who has been predesignated is responsible for managing the employee's care and this management includes referrals to other physicians. Administrative regulations many not alter or amend a statute or enlarge its scope. California Government Code section 11342.2 provides that "no regulation adopted is valid or	

			effective unless consistent and not in conflict with the statute…" Because the Labor Code does not distinguish between the designated personal physician of employees of employers that offer MPNs and employers that do not offer MPNs, we do not believe that the DWC has authority to make such a distinction. Based on these Labor Code sections, Title 8, California Code of Regulations, section 9767.1 of the final MPN regulations was drafted to define a covered employee as follows: (2) "Covered employee" means an employee or former employee whose employer has ongoing workers' compensation obligations and whose employer or employer's insurer has established a Medical Provider Network for the provision of medical treatment to injured employees *unless:* (A) the injured employee has properly designated a personal physician pursuant to Labor	

			Code section 4600(d) by notice to the employer prior to the date of injury, or; (B) the injured employee's employment with the employer is covered by an agreement providing medical treatment for the injured employee and the agreement is validly established under Labor Code section 3201.5, 3201.7 and/or 3201.81." (Emphasis added.) Pursuant to the MPN regulations, an employee who has predesignated a personal physician is not a covered employee in a MPN and is not required to treat with MPN physicians. The predesignation regulations' reference to referrals by the personal physician is consistent with this definition. As to the comment that the predesignation regulations threaten to undermine the cost-containment purposes underlying MPNs and authorized by SB 899, treatment by the predesignated physician and associated	

			referrals will still be subject to utilization review, limits on chiropractic and physician therapy services limits, ACOEM treatment guidelines and the Official Medical Fee Schedule.	
§9780.1(c)	Concerned that by allowing a predesignated physician to refer to a specialist outside the MPN, the employee will no longer be within the MPN.	Public Hearing December 15, 2005 Stuart Baron Worker's Compensation Claims Control Oral Comments	We disagree. Requiring a predesignated physician to make referrals within the employer's MPN goes beyond the authority granted by the Labor Code section 4600. This section does not distinguish between employees of employers that offer MPNs and employers that do not offer MPNs. Additionally, it does not authorize the DWC to implement regulations that would distinguish between the two classes of employees. Although the Labor Code is silent regarding restrictions on referrals by the primary care physician, Labor Code section 4061.5 states in relevant part: "The treating physician [is] primarily responsible for managing the care of the injured worker…." This section supports an interpretation that	None.

			the treating physician who has been predesignated is responsible for managing the employee's care and this management includes referrals to other physicians. Administrative regulations many not alter or amend a statute or enlarge its scope. California Government Code section 11342.2 provides that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute…" Because the Labor Code does not distinguish between the designated personal physician of employees of employers that offer MPNs and employers that do not offer MPNs, we do not believe that the DWC has authority to make such a distinction. Based on these Labor Code sections, Title 8, California Code of Regulations, section 9767.1 of the final MPN regulations was drafted to define a covered employee as follows:	

			(2) "Covered employee" means an employee or former employee whose employer has ongoing workers' compensation obligations and whose employer or employer's insurer has established a Medical Provider Network for the provision of medical treatment to injured employees *unless:* (A) the injured employee has properly designated a personal physician pursuant to Labor Code section 4600(d) by notice to the employer prior to the date of injury, or; (B) the injured employee's employment with the employer is covered by an agreement providing medical treatment for the injured employee and the agreement is validly established under Labor Code section 3201.5, 3201.7 and/or 3201.81." (Emphasis added.) Pursuant to the MPN regulations, an employee who has predesignated a personal physician is not a covered employee in a MPN and is not	

			required to treat with MPN physicians. The predesignation regulations' reference to referrals by the personal physician is consistent with this definition.	
§9780.1(d)	The statute only allows an employee to designate his personal physician, not health plan. Therefore, it goes beyond the authority to allow the predesignated physician to refer to physicians outside the MPN. Commenter compares the MPNs to the HCOs.	Public Hearing December 15, 2005 Mark Rakich California Association of Joint Powers Assoc. Oral Comments	We disagree. Requiring a predesignated physician to make referrals within the employer's MPN goes beyond the authority granted by the Labor Code section 4600. This section does not distinguish between employees of employers that offer MPNs and employers that do not offer MPNs. Additionally, it does not authorize the DWC to implement regulations that would distinguish between the two classes of employees. Although the Labor Code is silent regarding restrictions on referrals by the primary care physician, Labor Code section 4061.5 states in relevant part: "The treating physician [is] primarily responsible for managing the care of the injured worker…." This section supports an interpretation that	None.

			the treating physician who has been predesignated is responsible for managing the employee's care and this management includes referrals to other physicians. Administrative regulations many not alter or amend a statute or enlarge its scope. California Government Code section 11342.2 provides that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute…" Because the Labor Code does not distinguish between the designated personal physician of employees of employers that offer MPNs and employers that do not offer MPNs, we do not believe that the DWC has authority to make such a distinction. Based on these Labor Code sections, Title 8, California Code of Regulations, section 9767.1 of the final MPN regulations was drafted to define a covered employee as follows:	

			(2) "Covered employee" means an employee or former employee whose employer has ongoing workers' compensation obligations and whose employer or employer's insurer has established a Medical Provider Network for the provision of medical treatment to injured employees *unless:* (A) the injured employee has properly designated a personal physician pursuant to Labor Code section 4600(d) by notice to the employer prior to the date of injury, or; (B) the injured employee's employment with the employer is covered by an agreement providing medical treatment for the injured employee and the agreement is validly established under Labor Code section 3201.5, 3201.7 and/or 3201.81." (Emphasis added.) Pursuant to the MPN regulations, an employee who has predesignated a personal physician is not a covered employee in a MPN and is not	

			required to treat with MPN physicians. The predesignation regulations' reference to referrals by the personal physician is consistent with this definition. As to the comment that the predesignation regulations threaten to undermine the cost-containment purposes underlying MPNs and authorized by SB 899, treatment by the predesignated physician and associated referrals will still be subject to utilization review, limits on chiropractic and physician therapy services limits, ACOEM treatment guidelines and the Official Medical Fee Schedule.	
General	Re Labor Code section 4600(d), disputes are to be governed by Knox-Keene. The draft regulations do not address this.		This comment goes beyond the scope of these regulations.	None.
§9780.1(f)	Regulations do not allow employer to contact the predesignated physician for any purpose. This causes uncertainty for employers. Employers should be able to ask the physician if he is the		We disagree. Contacting the physician before there is a work related injury is an invasion of the employee's privacy, the patient physician confidentiality, and	None.

	regular physician, a primary care physician and agreed to being predesignated.		could easily be abused by inquiring about a potential employee's health status prior to hire.	
§9780.1(a)(3)	Disagree that someone else in the physician's office should be able to convey agreement.		We disagree. This is an administrative task and delegating the task will help the physicians who wish to be designated by their patients.	None.
	"Other documentation" is unclear.		We disagree. Trying to list all types of documentation that may show that the physician agreed to be predestinated is more likely to cause disputes, as many examples may be factually specific.	None.
	The employee should only be allowed to predesignate and treat with his personal physician. The personal physician should not be able to refer the employee to other physicians outside the MPN.		We disagree. Requiring a predesignated physician to make referrals within the employer's MPN goes beyond the authority granted by the Labor Code section 4600. This section does not distinguish between employees of employers that offer MPNs and employers that do not offer MPNs. Additionally, it does not authorize the DWC to implement	None.

			regulations that would distinguish between the two classes of employees. Although the Labor Code is silent regarding restrictions on referrals by the primary care physician, Labor Code section 4061.5 states in relevant part: "The treating physician [is] primarily responsible for managing the care of the injured worker…." This section supports an interpretation that the treating physician who has been predesignated is responsible for managing the employee's care and this management includes referrals to other physicians. Administrative regulations many not alter or amend a statute or enlarge its scope. California Government Code section 11342.2 provides that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute…" Because the Labor Code does not distinguish between the designated personal physician of	

			employees of employers that offer MPNs and employers that do not offer MPNs, we do not believe that the DWC has authority to make such a distinction. Based on these Labor Code sections, Title 8, California Code of Regulations, section 9767.1 of the final MPN regulations was drafted to define a covered employee as follows: (2) "Covered employee" means an employee or former employee whose employer has ongoing workers' compensation obligations and whose employer or employer's insurer has established a Medical Provider Network for the provision of medical treatment to injured employees *unless:* (A) the injured employee has properly designated a personal physician pursuant to Labor Code section 4600(d) by notice to the employer prior to the date of injury, or; (B) the injured employee's employment with the employer is	

			covered by an agreement providing medical treatment for the injured employee and the agreement is validly established under Labor Code section 3201.5, 3201.7 and/or 3201.81." (Emphasis added.) Pursuant to the MPN regulations, an employee who has predesignated a personal physician is not a covered employee in a MPN and is not required to treat with MPN physicians. The predesignation regulations' reference to referrals by the personal physician is consistent with this definition. As to the comment that the predesignation regulations threaten to undermine the cost-containment purposes underlying MPNs and authorized by SB 899, treatment by the predesignated physician and associated referrals will still be subject to utilization review, limits on chiropractic and physician therapy services limits, ACOEM treatment guidelines and the	

			Official Medical Fee Schedule.	
	LATE COMMENTS			
§9780(d) **§9780.1(f)**	The commenter states that rather than simply providing clarity within the regulation that a predesignated physician need not be a member of the employer's MPN, the proposed regulation takes the extraordinary step of declaring that the limited statutory right to designate a "personal physician" is in fact a right to opt out of the MPN altogether. This provision prohibits the employer from contacting a "predesignated physician" to determine predesignated status. We have no objection to a prohibition on contact for purposes of obtaining medical information or medical history. However, we do object to the prohibition on clarifying the potentially uncertain status of the physician. The language of the proposed regulation is illogical. The physician is not lawfully a predesignated "personal physician" (who cannot be contacted) unless that physician is 1) a primary	(Form Letter) Roger L. Wong, Deputy City Manager, City of Watsonville Carolyn Richard, WC Administrator, City of Santa Ana December 16, 2005 Letter Carol Perry, Interim Superintendent, Mendocino Unified School District December 21, 2005 Letter Todd R. Carlson, Mayor Town of Yountville December 27, 2005 Letter	We disagree. See above response. We disagree. Contacting the physician before there is a work related injury is an invasion of the employee's privacy, the patient physician confidentiality, and could easily be abused by inquiring about a potential employee's health status prior to hire. We also disagree that there is authority to require the physician, prior to the injury, to provide sign a form that he or she has agreed to be predesignated.	None. None.

§9780.1(a)(3)	care physician, 2) the employees "regular" physician, and 3) has "agreed" adequately documented, the physician is not yet a predesignated personal physician. It seems only logical that this uncertainty be resolved prior to injury, rather than only after an injury occurs. This problem is exacerbated by the failure of the proposed regulation to adequately specify what "other documentation" of physician agreement will be acceptable. (See discussion of subdivision (a), below.) If an employer could resolve this issue up front, disputes and complications such as the proposed regulation addresses in subd (i), discussed below could be avoided. There is no specification of what sort of "other documentation" will suffice. Commenter believes that this phrase requires further clarification. The recommendation is to provide in the regulation that a valid notice must be		We disagree. Trying to list all types of documentation that may show that the physician agreed to be predestinated is more likely to cause disputes, as many examples may be factually specific. We disagree that the regulations need to be revised. Section	None. None.

	completed prior to injury, or the physician named in the notice is not a valid personal physician for that injury. The regulation should also provide a pre-injury mechanism to resolve any defects or ambiguities.		9780.1(a)(1) sets forth what is required for a valid predesignation.	
General Comment	The commenter states that the new restriction seems to be in favor of the employer and insurance company, but not the injured worker. The recommendation is to reconsider the issue because chiropractic is cost effective and works better than medicine when it comes to spinal related and strain/sprain type of injuries.	(Form Letter) Tiffany Todd Ernest Todd Madeline Todd December 16, 2005 Phillip Skornia December 19, 2005	We disagree. Labor Code section 4600(d)(1)(A) requires that in order to be predesignated, the physician must be an M.D. or D.O. However, although only an M.D. or D.O. may be predesignated by the employee, chiropractors may still participate in an injured worker's care because the employee may change his or her treating physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601) Pursuant to section 9783.1 of the regulations, in order to be eligible to make this change, the employee must give the employer the name and business address of the personal chiropractor in writing prior to the injury or illness.	None.

General Comment	The commenters express their opposition to the proposed regulations defining predesignation of physicians unless amended. Commenters are asking that the regulations remove the exclusive reference to medical doctors. Commenters and injured worker patients are concerned that taken out of context, insurance claims examiners will read the primary care physician definition and prevent their treatment or coordination of treatment, thus causing expensive delays to the treatment to which the injured worker is entitled. Commenters and Injured worker patients have already experienced the misinterpretation of the law governing primary treating physicians by the SCIF until DWC intervened. Commenters are concerned that the same misinterpretation of primary care physician will be made causing unneeded pain for the injured employee and unneeded added expense to the premium-paying employer in curing or relieving the workplace injury. Commenters states that by making reference to only one type of licensed health care professional, the proposed definition of primary care physician will	(Form Letter) Karl A. Hoffower, D.C. Steven D. Jensen, D.C. Joseph A. Combs, D.C. Darryll Klawitter, D.C. Ralph F. Herndon, D.C. Shawn Yarmo, D.C. Harut Rushanian, D.C. Randy C. Gall, D.C. December 16, 2005 Mail Garo Tchakian, D.C. December 20, 2005 Mail Pete Park, D.C. December 25, 2005 Email David Packard, D.C. December 29, 2005 Letter	We disagree. Labor Code section 4600(d)(1)(A) requires that in order to be predesignated, the physician must be an M.D. or D.O. However, although only an M.D. or D.O. may be predesignated by the employee, chiropractors may still participate in an injured worker's care because the employee may change his or her treating physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601) Pursuant to section 9783.1 of the regulations, in order to be eligible to make this change, the employee must give the employer the name and business address of the personal chiropractor in writing prior to the injury or illness.	None.

	be anything but clear to the detriment of injured worker patients and premium-paying employers. Although commenters believes that the draft regulation is not intended to prevent doctors of chiropractic from being primary care physicians, commenters believe that it will create unnecessary confusion and expensive, patient-damaging care delays. The recommendation is to amend the regulation to remove all reference to any specific type of health care provider and to be clear to all in the workers' compensation community that doctors of chiropractic can serve in the capacity of primary care physician.			
General Comment	The commenter states that there may be ambiguity regarding the proposed regulations that may prevent chiropractic physicians from providing care for injured workers. Commenter asks that any reference to exclusive provision of care by medical doctors be removed and amended to read inclusion of doctors of chiropractic. Commenter found that chiropractic physician is less costly, and more	Charlene H. Orszag, M.A. President, CHO & Associates December 14, 2005 Fax	We disagree. Although only an M.D. or D.O. may be predesignated by the employee, chiropractors may still participate in an injured worker's care because the employee may change his or her treating physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601)	None.

	efficient than utilizing medical doctors in the area. Commenter wishes to be able to continue to use chiropractic providing treatment and coordination of treatment for injured workers in whom the commenter has confidence.		Pursuant to section 9783.1 of the regulations, in order to be eligible to make this change, the employee must give the employer the name and business address of the personal chiropractor in writing prior to the injury or illness.	
General Comment	Commenter states that chiropractors should be allowed as primary care physicians in the system.	Dr. David West December 23, 2005 Email	We disagree. Although only an M.D. or D.O. may be predesignated by the employee, chiropractors may still participate in an injured worker's care because the employee may change his or her treating physician to a personal chiropractor following a work-related injury or illness. (See Labor Code section 4601) Pursuant to section 9783.1 of the regulations, in order to be eligible to make this change, the employee must give the employer the name and business address of the personal chiropractor in writing prior to the injury or illness.	None.
General Comment	Due to the Workers' Compensation reform act, it has allowed the employer to have complete control of an injured	Melody Owen January 15, 2006 Email	This comment is beyond the scope of these regulations.	None.

	employee's medical condition. I have had many, many experiences with the insurance DENYING medical treatment. The new rules I find are good in many ways. However, allowing a Physician of the injured worker's choosing is more personal, efficient, and trustworthy. Remember, Physicians who the employer or insurance company picks, better keep the cost down or they will not have referrals from the insurance dept. again. This my friend is a known fact and is happening. I have had to pay for my own medical treatment as a work injury die to intolerable medical TX from workers' comp. insurance and their Physicians. Give injured workers our choice back. CONCERNED AND IN PAIN.			